

[Mr. C. P. Ramaswami Ayyar] [13th March 1922]

Select Committee in which Mr. Natesa Mudaliyar put forward his point of view and it was agreed on all hands that having regard to the pendency of the proceedings in the Council of State and the Legislative Assembly bearing upon Sir Maneckji Dadhabhai's resolution to the same effect the matter may be dropped at present."

IV

A BILL TO AMEND THE MADRAS CITY MUNICIPAL ACT, 1919.

The Hon'ble the PRESIDENT :—"The House will now resume consideration of the Bill to amend the Madras City Municipal Act, 1919. On the last occasion when this Bill was under consideration, it had before it the amendment moved by the Hon'ble the Home Member Sir Lionel Davidson to clause 4. The amendment was to omit from the explanation in sub-clause (1) the words 'thereof' or 'a portion thereof' and the words 'at cost price' or 'at less than or more than the cost price'. That was the amendment which was under discussion. The further consideration of the Bill was adjourned to this day."

The Hon'ble Rai Bahadur K. VENKATA REDDI NAYUDU :—"Sir, I beg to move that the consideration of this may be taken up after lunch to-day."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"I second it."

The motion was put and carried.

V

A BILL TO AMEND THE COURT FEES ACT, 1870.

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"Mr. President, I beg to present the report of the Select Committee on the Bill to amend the Court Fees Act, 1870. I further move, Sir, that the Bill as reported by the Committee be taken into consideration."

The Hon'ble Khan Bahadur MUHAMMAD HABIB-UL-LAH SAHIB Bahadur :—"I second it."

The motion was put and carried.

The Hon'ble the PRESIDENT :—"I shall now submit the Bill clause by clause for the consideration of the House. The preamble will lie over until we have finished the clauses."

CLAUSE 1.

Amendment 1.

Mr. P. VENKATASUBBA RAO :—"Sir, I beg to move—

"1. In sub-clause (a) insert the word "Temporary" before the word "Amendment"."

"It has been explained by the Hon'ble the Law Member that there will be a deficit of 105 lakhs and the taxation Bills yield a revenue of 77 lakhs. The deficit can only be temporary, and I do not think we shall be justified in passing this measure permanently now, because we are not sure what the financial condition of the province will be next year. There is the probability of a remission of a sum of one crore of rupees of our contribution to the Government of India. Moreover, Government have not made sufficient attempts to effect retrenchment, and what retrenchment they have so far made is more or less a paper retrenchment. Besides, Sir, if it is found necessary at the end of the next year, we can extend the period of the Bill. I commend my amendment to the House."

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[Mr. P. Venkatasubba Rao]

Clause 1—*cont.*

Mr. N. A. V. Somasundaram Pillai seconded the motion.

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"Mr. President, in moving the introduction of this Bill, I pointed out to the House that the charges for judicial administration are not covered by the revenue at present received. I drew also the attention of the House to the fact that unless there is an increased production of court fees to the extent of about 30 to 35 lakhs, we cannot balance the receipt and the expenditure. I, as a lawyer, Sir, would have been exceedingly pleased indeed not merely not to raise the court fees but also to reduce it; for, every lawyer believes that justice is one of the elementary duties of the State and has got to be provided for from general revenues. But, unfortunately, the position of this Province now is such that it is impossible to achieve that ideal, and I think that it is our duty to raise as much revenue out of Court Fees as is needed to relieve the general revenues from the burden of maintaining courts. A statement I read to you on the last occasion justifies the imposition of court fees so as to raise the revenue at least to the extent of about 35 lakhs. Even that in the course of a few years, if, for instance, you keep on the necessary number of courts to do justice to the clients, would not be enough. In these circumstances, I do not find any hope of your being able to reduce the fees next year. If, for instance, you achieve some reduction in the impost which you have now got to pay to the Government of India, I think, Sir, every rupee for it ought to go to the development of this Province. In these circumstances, I am not able to see that any advantage will be gained by restricting this Act for a year with all the trouble of levying court fees at a higher rate for a year in cases which are filed during the year but which may drag on for the next five years. On the other hand, Sir, I may draw the attention of the House to a section in the existing Court Fees Act which gives all the power which is necessary and which is sought to be achieved by this amendment. Under section 35 of the Court Fees Act, the Governor in Council—it was the Governor-General in Council in the original Act; by the Devolution Act the power is now given to the Governor in Council—may from time to time by notification in the *Gazette of India*—it is now in the *Port St. George Gazette*—reduce or remit in whole or in part of British India all or any of the fees mentioned in the first and second schedules. If, for instance, we get into a flourishing state, it will be the duty of the Finance Committee to suggest a reduction of the court fees on the side of revenue, and I for one, Sir, would be extremely glad to accept that proposition if we are in a position so to reduce it. I have not the slightest doubt that the Hon'ble the Finance Member will also agree to it. In these circumstances, there is no advantage gained in making the Act temporary. In none of the other Provinces have they made it temporary."

Rao Bahadur C. V. S. NARASIMHA RAJU :—"Mr. President, in the course of his speech while introducing the Bill, the Hon'ble the Law Member was pleased to state that 75 per cent of the suits instituted were decided in favour of the plaintiff. That shows clearly that most of the litigation is not frivolous and that it is necessary that the parties should have easy access to these courts. It has been said that the question of balancing the expenditure and the receipts regarding administration of justice is to be looked into. In the course of his speech the Hon'ble the Law Member admitted that he shall be very much pleased if possible to give cheap litigation to the litigating public,

[Mr. C. V. S. Narasimha Raju]

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Clause 1—*cont.*

if I understand him correctly. When that is his wish I beg to submit that this is not the only taxation left open to the provincial Governments that is capable of being adjusted from time to time. Of course there is the other taxation—Excise—which is entirely in the hands of the Executive.

“One other ground that is urged by the Hon'ble the Law Member is that it is left open to the Governor in Council to revise these . 11-15 a.m. rules at any time. I beg to submit that it is exactly the point where there is the real difficulty for this Council to accept it. Why should this Council give up the right of its own judgment on any particular thing and leave it to the discretion of the Executive, and why should not this Council control the taxation power from time to time. The Hon'ble the Law Member asks us to leave it to the good sense of the Executive to alter the rates according to the necessities of the province. I do submit that there may be a good number of cases in which this Council may have a wish that the expenditure must be spent in a particular way, not for augmenting the prestige of the Executive, but for nation-building purposes, such as the development of education, public health, industries, etc. Everything depends upon the way in which the budget is prepared from year to year. If the budget is prepared in a way not acceptable to this House, taxation measures will be rejected by the Council. I think that this privilege should not be taken away from us and be left to the sweet will and pleasure of the Executive. For these reasons, I support the amendment.”

Mr. C. V. VENKATARAMANA AYYANGAR :—“I also support the amendment before the House for one or two reasons. It has been said that there will be a deficit this year and it must be made up. We hope that the Government of India may come to our rescue next year, and that there will be a reduction in the amount that is to be paid to them to the extent of about one crore of rupees. Even if this hope is not realised, if any committee on retrenchment that may be appointed by the Government cannot make sufficient retrenchment (and it is absolutely necessary to introduce such a Bill as this next year), there may be a one-section Bill passed by this Council as we are accustomed to do, and the whole Act may be extended again. Therefore, it is not necessary at all to anticipate the future difficulties. The Hon'ble the Law Member referred to the question of the development of the province. We are yet to know what this development of the province is to be. Of course, it does not mean development in the Development Department, because there has not been any increase there at all. The development of the province, according to the Law Member, must be development in the increase of pay to the higher officers.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*interrupting*) :—“What I meant was development in education, development in sanitation, development in public health, etc., which will be made if we can spare money. Whatever money the Government of India can spare us ought to go to these development departments and not to the increase of pay to the higher officers.”

Mr. C. V. VENKATARAMANA AYYANGAR (*continuing*) :—“I am glad that the Hon'ble the Law Member has referred to everything except the Development Department. Whatever it may be, there is not much improvement in the various development departments, even those under the Local Self-Government Minister or the Minister for Education. There is no use of all this so long as the cry of the village officers and the non-gazetted

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Clause 1—*cont.*

officers is there. When our suggestion about the lower class of officers is not accepted, there is no reason why their suggestion that this measure should be made permanent should be accepted. After all, we are not in any way crippling the resources of this year. Therefore, we do not make the Government suffer very seriously if we do not legislate for future generations. For the sake of these 30 lakhs, we should not make this measure a permanent one. Therefore, I strongly support the amendment."

Rao Bahadur T. A. RAMALINGA CHETTIYAR :—" Sir, I rise to oppose the amendment for this reason : I have been saying from the beginning, that, though the deficit is a large one, it may be met by borrowing, and provision may be made for interest, sinking fund and other charges. We ought to make provision for these for the next 10 or 12 years. If my suggestion is approved—I think that even the Finance Member has come to the same opinion—if we are going to meet the deficit by borrowing, we ought to pass this Bill and the other Bill also. Even on the understanding that the deficit can be met this year by borrowing, and that next year there will be no deficit, we ought to have these Bills permanently. There is no chance of this Bill or the other Bill being altogether abrogated next year or the year after next, or at any rate, in the near future. On these grounds, I oppose the motion that this Bill be a temporary measure."

Mr. T. ARUMAINATHA PILLAI :—" Sir, I rise to support the amendment moved by my friend Mr. Venkatasubba Rao. The Hon'ble the Law Member, when he moved for the introduction of this Bill, relied upon a chit issued by the Hon'ble the Finance Member mentioning the total amount of deficit that would arise in the current year and in the next year, and ascribing the whole deficit to the activities of the non-co-operators. It was also said, if I may put my own interpretation upon it, that the deficit would only be a temporary one. It was only because it was thought to be a temporary deficit that persons like myself here opposed the introduction of the Bill and asked the Hon'ble the Law Member not to increase the court fees, but to meet the deficit by some other means. Somehow or other this Council has been good enough to give assent for the introduction of this Bill. But now, the Hon'ble the Law Member says that so far as the Judicial department is concerned, there is a deficit of about six lakhs of rupees, and there is no chance of the deficit going down, and therefore it is necessary to pass the Bill and raise the court fees. I am extremely glad to find that the Hon'ble the Law Member, as a lawyer, accepts the principle that so far as justice is concerned, it ought not to be made a source of revenue. I submit, Sir, that if the word of the Hon'ble the Chief Justice of the Madras High Court has to be given any consideration by this Government, this measure should only be a temporary one. So far as this Bill is concerned, it was originally intended to serve a temporary purpose, to meet a temporary deficit, and as such I do not think there is any necessity now to put it permanently on the Statute Book. In order to avoid this difficulty, the Hon'ble the Law Member referred to section 35 of the Court Fees Act, wherein, he says, the Governor in Council has got the power to revise the court fees according to circumstances. I submit, Sir, that it should be left to the people to judge whether it is necessary to increase the court fees or reduce them. This year we find a deficit and therefore we agree to the increase of court fees this year. Suppose next year the province becomes prosperous, it will not be necessary to increase the

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Clause 1—*cont.*

fees. The Hon'ble the Minister for Education shakes his head and says that there is no chance of that. I wish he were a false prophet at least in this direction. I submit, Sir, that so far as section 35 is concerned, it is a section which has not been availed of at any time. We have been crying hoarse for retrenchment in the cost of administration, and it has not been possible to do anything in this direction. If we put this in the Statute Book as a permanent measure, it will be giving a chance for the Government to say 'we have got money enough and it will not be possible to effect retrenchment'. Hence, if really retrenchment is to be effected, the power to have a permanent taxation should not be allowed to them. Hence, I support the amendment moved by my friend Mr. Venkatasubba Rao."

Diwan Bahadur M. KRISHNAN NAYAR:—"I oppose the amendment. Sir, my reasons are these. As I said at the time of the general discussion of the budget, I see no possibility of the deficit budget being converted into a surplus budget in the near future. So far as I can see, I see no possibility of converting it into a surplus budget at any time so long as the contribution of 348 lakhs due from this Government to the central Government has to be paid. Supposing that contribution will be given up—we have hopes of that being given up gradually, though not at once—even then, the need for having as much money as possible will continue to exist. As I said on a former occasion, the development departments—I use the expression in a broad and general sense—cannot afford to remain stationary. Remaining stationary means moving backwards. Year after year they will demand and reasonably and necessarily demand larger allotments. If the progress of the country has to be achieved, larger allotments will have to be given to them. So that, even if the Government of India relinquish the contribution due from us, enough of funds for the development of the country as a whole will not be forthcoming, and it is necessary to provide as much money as possible for these departments. So, if this amendment be now carried and if the Act be made only a temporary one, the chances are that this Council and this Government will have to go to the country with probably more objectionable methods of taxation. To avoid that contingency—that dangerous contingency—I think it is far better for the Council to choose the lesser of the two evils, namely, to have this amendment rejected. This Bill is not like the Revenue Recovery Act Amendment Bill which was considered and passed by the Council the other day. There, the Hon'ble the Revenue Member restricted the Bill to a certain period, and the Council as a whole accepted the suggestion. That Bill, unlike the present Bill, was designed to meet a temporary difficulty which is likely to pass away. But the difficulty that is now sought to be met by this Bill is not a temporary one. It is of a permanent kind. In any case, as I submitted, having regard to the need and the wisdom of choosing the lesser of the two evils—certainly taxation is an evil—let us accept this Bill as a permanent measure instead of driving this Council to accept a more objectionable method of taxation on a future occasion. For these reasons, I oppose the amendment."

Mr. C. RAMALINGA REDDI:—"Sir, I submit for the consideration of this House whether in view of the fact that the Government of India has promised to remit our contribution to the extent of nearly three and a half crores, it is necessary at this stage to put this Bill

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Clause 1—*cont.*

permanently on the statute book. I quite realize that making the Act temporary for one or two years will not do. Our deficit is nearly a crore, and if the increments that we have been unanimously urging is to be given effect to for the village headmen, then it would probably amount to a crore and 40 lakhs. In budgeting we must always provide for a margin so that the ministerial departments might develop their activities still further. So I am against making this Act temporary in the sense of limiting it to one or two years. But there is every reason to believe that if the Hon'ble the Law Member would kindly agree to it that a five year period would probably see us in possession of all the potential assets of $3\frac{1}{2}$ crores which we are now giving to the Government of India as our contribution. On the hypothesis that that money would be available, say, within a period of five years we ought to be able to meet all our liabilities including those for development work quite comfortably. Under these circumstances I beg to know whether a limitation of a five-year period will not meet the issue fairly. There is much to be said against making justice more costly. I feel very strongly that this would affect the interests of the masses a great deal. One of the first things that a Government should secure is justice at once cheap and speedy. Making it more costly would not produce the intended prosperity or contentment of the people. I beg therefore with your permission, Sir, to enquire whether the Hon'ble the Finance Member will not be satisfied with a five-year limitation."

MR. K. V. RAMACHARI :—"I rise to support the amendment. This Bill was originally intended to fill up a temporary deficit that we had this year. It is well known to what causes this temporary deficit is due. The fall in the excise revenue is due to non-co-operation and is temporary. Honourable members are quite aware that this non-co-operation movement is destined to die a natural death very soon; and in order to make up a deficit of a temporary nature, it is not advisable to have a permanent legislation on the statute book. Moreover, the House has expressed itself in unambiguous terms that there ought to be a drastic retrenchment in the budget that has now been before the House. By effecting retrenchment we will be able to save a large sum of money. Now we are paying a very unconscionable contribution to the Government of India. As a result of the deputation from this House, it will be seen that though there may not be any reduction during the coming year, that is 1922-23, yet there is likely to be a great reduction or permanent relief from the year 1923-24. Under these circumstances, I see no justification or necessity for placing this Act permanently on the statute book. With these words, I beg to support the amendment."

MR. T. SIVASANKARAM PILLAI :—"Sir, without committing myself to either view, I wish to place one or two circumstances before the Council in this connexion. If this amendment is accepted, the result will be there will be increasing disinclination on the part of the clients to institute suits for one year until the expiry of the proposed term of one year. So we will not have gained our object of meeting the deficit. Consequently for want of work many of the temporary courts and even permanent courts may have to remain idle for some time. In the meanwhile every munsif will be earning his increment and that will go to make the deficit perpetual."

THE HON'BLE SIR CHARLES TODHUNTER :—"May I add one word, Sir, in support of the opposition to this amendment on the part of the experienced

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Clause 1—*cont.*

administrator who sits opposite to me. In the first place it has been stated that our deficit is only a temporary deficit and that, therefore, we may borrow and so carry on the administration. I have pointed out to the House with extreme regret the fact that the deficit is not temporary. We are already in the third year of our deficits and we have not succeeded in meeting the last of them. As it is when this Bill is passed into law, we are not going to meet the whole of our deficit; it will still leave us with a considerable deficit.

“Again it was stated that we could easily meet our deficit by retrenchment. I pointed out the other day that, even if we stop every recruit and dismiss every superior officer, their pay for the year would still not cover the deficit. If honourable members will examine their own proposals for retrenchment in the budget they will see that, even if all of them are accepted, even then they will not meet the deficit. Therefore it is no use to suppose that we are going to meet the deficit straightaway out of the retrenchments proposed. On this question of retrenchment I should like to repeat what I stated the other day that we have the testimony of several members of the Finance Committee to the effect that the retrenchments which have been made cover all the retrenchments which can be made without radical changes. It is possible that we may be able to go further by making radical changes, but they cannot be made at once. Nor is it at all certain that the proposals that may be made will commend themselves to the House. Then again if we add 34 lakhs for village services—the imposition of a cess therefor was refused by the Council—that would largely increase the deficit. What are the hopes of that being extinguished by retrenchment?

“Then again, it was stated that our excise revenue is going to improve. As honourable members are well aware, the present policy of the majority of the House is one of temperance or prohibition. If the House carries out that policy—which it is within their power to do, excise being a transferred subject—then instead of reducing our deficit we shall have a much larger deficit to make up.

“Then again it was stated that we shall get back our contribution from the Government of India. I don't know how honourable members can take such an optimistic view after seeing the budget presented in the Legislative Assembly the other day. I ask those who have studied that budget whether we can entertain any hope of getting a rebate from the Government of India which in spite of the imposition of all the fresh taxation that could be thought of was still able to budget only for a deficit itself.

“Even if we get any more money we have got proposals by the score which have been advocated or passed by the House to be met. So that it will be seen that even if we get a rebate from the Government of India, we can spend it over and over again, not on the services which the Executive requires, but in meeting the demands of this House.

“Again it has been pointed out that the courts are working at a loss of about 6½ lakhs a year—although we are keeping a large number of courts temporary that ought to be made permanent, although we have got a lakh of suits pending. To provide for this, we want more courts. If we fulfil the necessities of the situation as regards courts, then in less than ten years the whole of the increase in our revenue will go on courts alone without leaving anything for meeting our deficit.

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Clause 1—*cont.*

“Lastly I should like to reiterate what my honourable friend, Mr. Sivasankaram Pillai, stated just now about the unfairness and the difficulties that would arise if we impose a special rate of court fee for a single year and about the way in which the unfortunate people who have, on account of limitation, to bring their suits this year will suffer as compared with those who pay their fees the year before and the year after.”

Mr. SAIYID MUHAMMAD PADSHA SAHIB Bahadur:—“Sir, I rise to support the amendment. The Hon’ble the Finance Member has met the reasons advanced by those who supported the amendment by saying that the deficit now facing the country is not of a permanent nature.”

The Hon’ble Sir CHARLES TODHUNTER (*interrupting*):—“May I just correct him, Sir? My endeavour was to show that it was not of a temporary nature.”

Mr. SAIYID MUHAMMAD PADSHA SAHIB Bahadur (*continuing*):—“I am glad to be corrected by the honourable member. The Hon’ble the Finance Member has urged that the mere fact that this deficit has been persistently present all these three years, that the country was obliged to budget for a deficit during all these years, goes to show that it is far from a deficit of a temporary character. But with due deference to his opinion, I would submit that the fact that for these three years we have been labouring under insufficiency of money is due only to the circumstance that the present times have been far from the piping times of peace. Even though the great European war had ended yet its consequences are still affecting the whole world. The dislocation of trade, the unfavourable rate of exchange and all the things which have affected the finances of the whole world are phases of a transient character which are indeed not permanent. They are sure to pass away in good time. So in spite of all that has been stated by the Hon’ble the Finance Member to show that the present deficit was of a permanent character, I still hold to my opinion that the present deficit is only of a temporary nature. So, Sir, when we know for certain that the thing for which we are providing a remedy is only of a temporary character, we shall not be justified in exploiting this opportunity to permanently increase the sources of the finances of the country at the expense of the poor tax-payer. It is unjust to do so and the injustice of it becomes all the more flagrant when we consider the nature of the enhancement that is proposed to be made. It has been admitted even by the Hon’ble the Law Member that administration of justice should not be made a source of revenue to the Government, and if the Council consented to the passing of this Bill for meeting the deficit, it is only for this reason that it felt confident that the enhancement in court fees would only be for a short period and that it will not be allowed to remain on the statute book for all time to come. We would therefore not be justified if, instead of making this a temporary measure in order to meet a temporary deficit, we try to make it permanent and thereby increase the sources of revenue to the Government. Another reason for making this Bill temporary is that even if we have not succeeded in our recent attempt to get a remission of our provincial contribution from the Government of India, yet we hope to get that in the near future.

“Another reason for recommending this Bill to be only a temporary measure is that this would act as an inducement to the Government to try and effect a radical, substantial retrenchment. If

[Mr. Saiyid Muhammad Padsha Sahib]

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Clause 1—*cont.*

this Bill is allowed to be permanent and the Government is able to make about 30 or 35 lakhs every year from this enhanced rate, it would, at the expense of the public, altogether obviate the necessity for the reduction of expenditure. Thus the apathy the Government have always evinced in the matter of retrenchment would be kept up. If the Government is not willing to reduce the expenditure, then we can tell them plainly that the fact that there has been a temporary deficit should not induce them to increase the rates of court fees permanently."

MR. S. T. SHANMUKHAM PILLAI:— 'I strongly oppose this amendment. It will not be possible for us to make up the deficit without increasing our receipts even though the contribution to the Imperial Government is waived. Money is required for the development of various industries. There is no possibility of finding money unless we develop our resources in all possible ways. This is only one of the ways and a harmless way too. I think the retrenchment will be carried on even after the passing of this Bill, and the Hon'ble the Finance Member has not laid aside his pruning knife. I do not think that, with these two sources, we shall be able to wipe off the deficit. The Hon'ble the Revenue Member also must expand the revenue by developing the existing sources. There is another strong reason. This measure will indirectly operate as an effective check against litigation which is as ruinous as drink. We are for putting down the drink evil, and we must work for the avoidance or prevention of litigation also. The middle and lower classes are ruined by litigation, which it is that has increased and is increasing the establishments of law courts involving enormous expenditure. This Act will do immense good to the poor and middle classes by the enhancement of court fees."

MR. B. MUNISWAMI NAYUDU:—"Sir, on principle I am in sympathy with the amendment. The only thing that can influence me to oppose it is a promise by the Government that the pay of the village officers will be enhanced. If the Government are prepared to promise that, I should think that this Council will be prepared to oppose the amendment. If the pay of the village officers is enhanced, it will mean a recurring expenditure of 34 lakhs to the Government and it will be proper that by this Bill at any rate the enhanced pay that would have to be paid by the Government shall be secured. Apart from the question whether it is good to enhance the stamp duty upon litigation and to divert a portion of it to the pay of village officers, having regard to the financial stringency and the loud clamour for increased pay of the village officers and the necessity to increase the same, I am prepared to request the Council to come to the support of the Government if it is prepared to consider the case of the village officers favourably. Of course our approval is subject to the preparedness of the Government to consider the question of lowering court fees at a future date when the contribution to the Government of India is reduced. Another view I should like to impress on the Council is that we are calling upon the Government to bring down the excise revenue which represents about a half of the income of the Presidency. The net income from land revenue is only 4½ crores, but the net income from excise is 5½ crores. If the House is anxious that that excise revenue should go, they should see that some other form of taxation takes its place as soon as possible. We would be able then to point to the Government another form of taxation. After all the contribution to the Government of India is only

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[Mr. B. Muniswami Nayudu]

Clause 1—*cont.*

3½ crores, but the loss from excise would be over 5 crores and we would have to provide for about 2 crores of revenue more. I oppose the amendment and request that the Government would state definitely whether they intend to provide for the village officers this year or not. If they are not able to do so, this Bill will have to be opposed."

Mr. S. SOMASUNDARAM PILLAI:—"I really sympathise with those members who supported the amendment. But the object of this Bill is to cover a deficit, and there is no chance of the deficit being removed in the nearest future. Even if the Bill is passed there will be a deficit of 28 lakhs: that means borrowing elsewhere which in its turn means payment of interest. We do not know in how many years we could discharge the debt. Such being the case how can we be sure that our finances would improve? Always every Act for the taxation of the people begins as a temporary measure and in the end it is almost in every case made permanent. It was in the year 1885 or 1886, during the viceroyalty of Lord Dufferin, that income-tax was introduced as a temporary measure on account of what was called the Burmese War. It has taken a root, a very deep root. That is what many honourable members seem to fear. If now taxes have to be levied, taxation should be levied on luxuries, and this is a tax on luxuries, for litigation is not one of the necessities of life.

"Secondly, it has been remarked that it would be a check upon litigation. It is true; for there are many factories for the manufacture of litigations and these factories will be closed if this Bill is passed. By far, the major portion of the litigation in this country is manufactured. Such a state of things should be put an end to.

"Further, we want money to develop our resources, to make good the loss in the revenue from drink. Even if the contribution to the Government of India is waived we can utilize the money for the departments which develop the resources of the country. There is also a tendency for the Judicial Department not to take any measures for retrenchment. Only the other day I read that they were going to open a new District Munsif's Court in the Tanjore district. That shows there is an increase of litigation. That is another reason why litigation should be taxed. For these reasons, I oppose the amendment."

The Hon'ble Khan Bahadur MUHAMMAD HABIB-UL-LAH SAHIB Bahadur:—"If I intervene at all at this stage, which indeed I had not the least intention to do, I do so merely because the honourable member from Chittoor, my friend, Mr. Muniswami Nayudu, has expressed his opinion that he would not oppose this amendment on a contingent condition, viz., if the Government were willing to allot the necessary money for the grant of increased salary to the village officials, in which case he said he would give his support whole-heartedly to this and the following measure. It is necessary for me to repeat that it was on account of the great desire which the Government had to grant increased salary to village officials that they put forward before this House two definite measures whereby they were confident they could realize enough money for the purpose of doing justice to the demands of these officers. But the House turned down both these measures. And I assume that when they took that deliberate action they were perhaps cognizant of the consequences which would inevitably have to follow on account of the financial position of this province which had been laid bare

[Mr. Muhammad Habib-ul-lah Sahib]

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Clause 1—*cont.*

before them prior to their action in this matter. Let me emphasise, Sir, that the Government have never declined the reasonable requests of the village officers or any reasonable demands they had until now put forward. They would themselves have considered this question had their financial condition permitted. The financial condition is so depressing that to think of mounting up the deficit by another 33·40 lakhs which is essential for the purpose of meeting the demands of officials, for the purpose of giving increase in their salaries is, to my mind, somewhat of an unthinkable idea.

“But, however, Sir, I, to whom a personal appeal has been made by my honourable friend, Mr. Muniswami Nayudu, will be quite
 12 noon. willing to bring forward a supplementary demand before this House for such amount as may be considered necessary to pay these village officers the extra sum, if, Sir, with your permission, I could lay it before the House and if the House would unanimously vote in favour of that amount. It should not, however, be forgotten that the consequence will be that we shall be raising our deficit by a sum which is represented by that additional expenditure. And that again will be subject to this condition, that the Government of India must be prepared to lend us not only the sum which represents our present deficit, but also the added sum on account of the increase in the pay of the village officers. If the Government of India would be willing to advance that money, if the House would be willing to authorize me to incur that expenditure, and if you, Sir, would allow me to bring up that additional allotment later, I should indeed be glad to do so.

“Just in this connexion, I may say that this Bill which we are now considering and the next one which will also be taken up this day are for the purpose of securing as much money as it is possible for us to secure with a view to the reduction of the already existing deficit; but if any reductions are made in the proceeds of any of these two Bills, to that extent our deficit will have to be raised. Consequently if the existing deficit is again raised by any action of the Legislative Council by a reduction of the fees that are proposed, that will add another item to the extra amount that may have to be paid to the village officers. So, if the statements which I have now made will satisfy the House that the Government still possess the heart to help the village officers and that their claims have not been lost sight of absolutely in spite of the rejection of the two cess Bills, and if we succeed in securing the necessary money in the shape of loan from the Government of India, we shall do our level best to pay out of it the amount required for meeting the extra expenditure in connexion with the increase of pay of these village officers. But, of course, we shall make it sufficiently clear to the Government of India that the Legislative Council in voting for an additional allotment of 33·40 lakhs, or whatever it may come to, have taken the sole responsibility of raising the deficit and applying for a loan in respect of the extra deficit.”

Mr. T. C. SRINIVASA AYYANGAR:—“Sir, there is something to be said both for and against the motion now before the Council. The present Bill itself is necessitated by the huge deficit which is sought to be covered. It is not intended by this Bill to redress the inequalities in the imposition of the court fee which undoubtedly the existing Act presents, regard being had to the time and attention and the worry which are caused to the courts by the suits. It is not the money suits that take the time of the courts or demand the attention of the judges as the title suits. They are a class of suits

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[Mr. T. C. Srinivasa Ayyangar]

Clause 1.—*cont.*

where only fixed fees are levied irrespective of the real money value or the importance of the claim made by the parties, and they occupy invariably a long time in the trial. The inequality in the Act is patent when you find it demands a court fee on the *ad valorem* rate in suits or promissory notes, bonds, etc., which are hardly contested and which can be disposed of in a few minutes. The court fee paid in such suits is abnormally more than the court fee which is levied in some of the title suits and also in another class of suits, for example, where injunctions are prayed for, in which parties are entitled to value it as they like, say, at Rs 100 paying $7\frac{1}{2}$ rupees court fee and which occupy the time of the courts for days and sometimes weeks. Therefore the Act itself deserves to be revised in many particulars, so that there may be an equitable redistribution in the matter of the court fee. The revision of the Act is an absolute and imperative necessity. But the Bill now before the Council, as has been repeatedly said, is occasioned by the necessity for money. But this necessity may not last for ever. Even though we cannot reasonably fix a term of one year or two years for the operation of this Bill when it becomes law there is something to be said in favour of the view that the Bill, as it is, when it becomes law shall have operation only for some time till our finances improve. So if the Government cannot now say with any certainty at what time they may hope for a change for the better in the finances of this Presidency, they may at least give us an understanding that as soon as the finances improve and they are in a position to go back upon some of the present financial legislation occasioned by necessity, they will undertake a revision of this Court-Fees Act, so as to work out a proper and an equitable distribution of the court Fees in respect of the various classes of suits. As it is, both in the existing Act as well as in the Bill that is proposed, practically simpler suits, simpler in the sense that they occupy less time and attention of the court than other suits and do not cause much strain, are taxed very heavily. Therefore, if we consider all these things, it would be very advisable that the Government should give an undertaking that as soon as the finances improve they will revise the law relating to court fees. That will be quite satisfactory."

The Hon'ble Sir LIONEL DAVIDSON:—"I move that the question be now put."

The motion for the closure was declared carried.

On the motion of Mr. O. Tanikachala Chettiyar a poll was taken with the following result:—

Ayes.

- | | |
|-------------------------------------|---|
| 1. The Hon'ble Sir Lionel Davidson. | 14. Mr. A. Ramaswami Mudaliyar. |
| 2. " Sir Charles Todhunter. | 15. Mr. K. Adinarayana Reddi. |
| 3. " Khan Bahadur Muham- | 16. Mr. R. Appaswami Nayudu. |
| mad Habib-ul-lah Sahib. | 17. Rao Bahadur V. Appaswami Vaidayar. |
| 4. " Mr. K. Srinivasa Ayyangar. | 18. Mr. S. T. Shanmukham Pillai. |
| 5. " Mr. P. Ramarayanar. | 19. Mr. V. Pakkiriswami Pillai. |
| 6. " Rai Bahadur K. Venkata | 20. Mr. P. T. Rajan. |
| Reddi Nayudu. | 21. Mr. S. Somasundaram Pillai. |
| 7. " Rao Bahadur A. P. Patro. | 22. Mr. P. Subbarayan. |
| 8. Mr. C. P. Ramaswami Ayyar. | 23. Mr. T. C. Tangavelu Pillai. |
| 9. Mr. T. E. Moir. | 24. Mr. V. C. Vellingiri Goundar. |
| 10. Mr. F. J. Richards. | 25. Rao Bahadur C. Venkata Ranga Reddi. |
| 11. Mr. R. Littlebailes. | 26. Mr. S. Muttumanickam Achari. |
| 12. Mr. E. Periyanaayagam. | 27. Rai Bahadur C. M. Narasimhaachari. |
| 13. Mr. R. K. Shanmukham Chettiyar. | 28. Dr. C. B. Rama Rao. |

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Clause 1—*cont.**Ayes*—*cont.*

29. Mr. A. Ranganatha Mudaliyar.
30. Mr. T. Sivasankaram Pillai.
31. Mr. T. C. Srinivasa Ayyangar.
32. Mr. M. Suryanarayana.

33. Mr. M. Ratnaswami.
34. Mr. G. Vandanam.
35. Mr. A. E. Rencontre.

Noes.

1. Mr. C. Ramalinga Reddi.
2. Mr. O. Tanikachala Chettiyar.
3. Mr. W. Vijayaraghava Mudaliyar.

4. Mr. A. T. Muttukumaraswami Chettiyar.
5. Mr. M. Narayanaswami Reddi.

The motion was carried, 35 having voted *for* and 5 *against*.

The main question was then put to the House, namely, the motion of Mr. P. Venkatasubba Rao, to *insert* in sub-clause (a) the word 'Temporary' before the word 'Amendment' in clause 1 of the Bill.

The motion was declared lost.

A poll was taken with the following result:—

Ayes.

1. Rao Sahib S. Ellappa Chettiyar.
2. Mr. C. V. Venkataramana Ayyangar.
3. Rai Bahadur T. M. Narasimbachari.
4. Rao Bahadur C. V. S. Narasimha Raju.
5. Mr. K. V. Ramachari.
6. Mr. A. Ranganatha Mudaliyar.
7. Mr. M. Suryanarayana.
8. Mr. T. Arumainatha Pillai.

9. Mr. N. A. V. Somasundaram Pillai.
10. Mr. T. C. Tangavelu Pillai.
11. Mr. V. C. Vellingiri Goundar.
12. Mr. P. Venkatasubba Rao.
13. Mr. Saiyid Muhammad Padsha Sahib Bahadur.
14. Sir M. C. T. Muttayya Chettiyar.

Noes.

1. The Hon'ble Sir Lionel Davidson.
2. " Sir Charles Todhunter.
3. " Khan Bahadur Muhammad Habib-ul-lah Sahib.
4. " Mr. K. Srinivasa Ayyangar.
5. " Mr. P. Ramarayaningar.
6. " Rai Bahadur K. Venkata Reddi Nayudu.
7. " Rao Bahadur A. P. Patro.
8. Mr. C. P. Ramaswami Ayyar.
9. Mr. T. E. Moir.
10. Mr. F. J. Richards.
11. Mr. Littlehales.
12. Mr. E. Periyannayagam.
13. Mr. R. K. Shanmukham Chettiyar.
14. Mr. A. Ramaswami Mudaliyar.
15. Mr. K. Adinarayana Reddi.
16. Mr. R. Appaswami Nayudu.
17. Rao Bahadur V. Appaswami Vandayar.
18. Mr. B. P. Devarajulu Nayudu.
19. Mr. S. T. Shanmukham Pillai.

20. Mr. T. A. Ramalingam Chettiyar.
21. Mr. O. Tanikachala Chettiyar.
22. Mr. W. Vijayaraghava Mudaliyar.
23. Mr. B. Maniswami Nayudu.
24. Mr. M. Narayanaswami Reddi.
25. Mr. V. Pakkiriswami Pillai.
26. Mr. P. T. Rajan.
27. Mr. W. P. A. Sandara Pandia Nadar.
28. Mr. S. Somasundaram Pillai.
29. Mr. P. Subbarayan.
30. Rao Bahadur C. Venkata Ranga Reddi.
31. Diwan Bahadur M. Krishnan Nayar.
32. Dr. C. B. Rama Rao.
33. Mr. T. Sivasankaram Pillai.
34. Mr. T. C. Srinivasa Ayyangar.
35. Rao Sahib E. C. M. Mascarenhas.
36. Mr. M. Ratnaswami.
37. Saiyid Diwan Abdul Razzaq Sahib.
38. Mr. R. T. Kesavulu Pillai.
39. Mr. A. E. Rencontre.

The motion was lost, 14 having voted *for* and 29 *against*.

Amendments 2 and 3.

The Hon'ble the PRESIDENT:—"The next amendment stands in the name of Mr. P. Venkatasubba Rao, namely,—

'2. In sub-clause (b) omit the full stop and add the following:—"and shall remain in force till 31st March 1923."'

"This motion will be out of order, because the House has just decided that the Bill shall not be a temporary measure."

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[The President]

Clause 1—cont.

“A similar remark will apply to the amendment proposed by Mr. Siva Rao, namely—

“3. *Add the following as sub-clause (c):—“(c) This Act shall remain in force till April 1924.”*”

Clause 1 of the Bill was then put to the House and passed and added to the Bill.

CLAUSE 2.

Amendment 4.

12-15 p.m. The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“Mr. President, I move—

“4. *In sub-clause (2) insert the words “unless there is anything repugnant in the subject or context” after the words “the principal Act” and before the words “Memorandum of Appeal.”*”

“This is merely a drafting amendment, for I find on examination of the sections that in one or two places the words ‘Memorandum of Appeal’ may not include cross objections. It is for the purpose of guarding against that, that I move this amendment.”

The amendment was put and carried.

Amendment 5.

The following amendment standing in the name of Mr. T. Arumainatha Pillai was ruled out by the Hon'ble the President :—

‘5. *Add the following as sub-clause (3):—“(3) This Act shall remain in force till 31st March 1923.”*’

Clause 2 as amended was then passed and added to the Bill.

CLAUSE 3.

Clause 3 was passed and added to the Bill.

CLAUSE 4.

Amendment 6.

Mr. T. ARUMAINATHA PILLAI :—“I beg to move the following amendment :—

“6. *In line 26 after the words “Code of Civil Procedure, 1908” add the following :—“or suits by trustees of public charitable or religious endowments against co-trustees or others in respect of the trusts or endowments of the institutions or to establish the right of trusteeship.”*”

“My idea in moving this amendment is this: So far as the present clause 4 is concerned, it exempts suits under section 14 of the Religious Endowments Act, 1863, and suits under section 91 or 92 of the Code of Civil Procedure, 1908. Section 14 applies only to suits instituted by worshippers or any other person interested in the public or charitable trusts for any mismanagement of the trust by the trustees or managers or superintendents and so on. Section 91 of the Civil Procedure Code refers to public nuisance and section 92 refers to scheme suits. But, Sir, there are certain classes of suits which are connected with trust properties and which would not come under any one of these sections. For instance, supposing a trustee has been dismissed by a committee and would not relinquish possession of the trust property, temple property or other endowment properties to the other trustees, when there is no scheme suit a suit has to be filed which would not go under

[Mr. T. Arumainatha Pillai]

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Clause 4—*cont.*

section 92 of the Civil Procedure Code as recently decided by the Madras High Court. And then, Sir, if the trustee has got to file a suit he has got to pay a stamp duty upon all the properties of the temple including the temple itself, the *Vahanams*, the Gods and all the lands. That would be the difficulty in which the trustee will be placed. And there is a sort of variation in the decisions also as to whether a trustee who wants to claim possession from a dismissed trustee or file a suit for his declaration as a trustee or for an injunction against the other man not to interfere with the possession of the property has to file a suit for possession. In one case in 33 Madras it was decided that such a suit would not lie, unless the trustee sues for possession of the property and asks for such possession as he can get. In a later decision in 36 Madras, it has been held that it may not be necessary to file a suit for possession at all.

“On the face of all these contradictory decisions, it is necessary that some sort of stability ought to be given to this sort of suits. Else we will be putting a premium upon dishonest trustees and forcing the rightful trustee to go to a court and pay a heavy stamp duty. Therefore, it is in the interests of charitable institutions and temples that I move this amendment.”

Mr. N. A. V. SOMASUNDARAM PILLAI:—“I beg to second this amendment. The same reasons which induced the Hon'ble the Law Member to exempt suits under sections 91 and 92 of the Code of Civil Procedure apply also to the suits mentioned in this amendment. Suits by trustees of public charitable or religious endowments against co-trustees or others in respect of trust endowments would be for the right of trusteeship. If this amendment is not made, the result will be this: that when a trustee is removed by the committee and when he would not hand over possession of the property, then the trustee who is newly appointed has to file a suit, and the question is raised whether he is a trustee properly appointed or not, whether he is entitled to the possession of the trust properties, temples and other things. Then the question arises as to what is the amount of court fee that has to be paid. In case it is to be paid upon all the properties belonging to the temple, including the temple buildings themselves, then the amount of court fees to be paid becomes an enormous one and even when such court fees are paid the result is that such fees have to be debited to the temple funds; for, the trustee, who, though dismissed or otherwise removed from the temple management, refuses to hand over the property, is found to be a person who is next to insolvency. Therefore it is difficult to recover the amount paid for court fees from the defendant, and the result would be the new trustee who has gone for this suit cannot be held personally responsible for this amount and the temple fund itself will have to bear the cost. The amount of court fees prescribed to suits for relief under section 14 of the Religious Endowments Act, 1863, or section 91 or 92 of the Civil Procedure Code as will be found in Schedule 2, Article 17, clause (iii), is a fixed fee of Rs. 50. So, with regard to cases other than scheme suits also, fixed fees should be prescribed instead of leaving the matter to be fixed by the court according to the value of the property.

“I may also beg leave to mention here that an attempt is being made to codify and amend the Religious Endowments Act and that in the said Bill provision may be made for cases where a trustee removed from office refuses to hand over the property to the new trustee. There is a provision now made therein for making an application to the District court on an

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Clause 4—*cont.*

eight-anna stamp paper for an order for handing over the properties. If what is proposed in the amendment is done, there is an end of all this. If you have the system of fixed fees introduced, there would not be any necessity even to make an application to the district court which will have to pass a summary order. Therefore I would strongly support this amendment."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"Mr. President, with regard to the particular case mentioned, it has my entire sympathy and, as pointed out by my friend Mr. Somasundaram Pillai, it has to be done by amending the Religious Endowments Act and I believe that is one of the proposals made in the revision of that Act. Now, the addition which is sought to be made here is not confined to these suits only, but covers a large number of suits in which there is no justification whatsoever for not charging the usual fee. I have put in these exceptions merely as a precautionary measure so as to give in terms statutory sanction to the construction adopted by courts not without difference of opinion. It was not intended to enlarge the scope of the judicial decisions settling the court fees payable upon the class of suits enumerated under exceptions. Now, the amendment reads thus: 'or suits by trustees of public charitable or religious endowments against co-trustees or others . . .'. I will first take co-trustees. The object of fixing a smaller or fixed fee is that in the class of suits contemplated by section 14 of the Religious Endowments Act or sections 91 or 92 of the Civil Procedure Code in what are really public suits filed by persons who are generally interested in public charities, but are not the managers or trustees thereof, or as one of the public interested for the law abating a public nuisance, it is not the plaintiff alone but he along with the general public benefits by these suits. In the class of cases now wanted to be introduced by way of exception we have a legal person in whom the property is vested, who is in possession of the property and who is bound to protect the interest of the charity he has under his control. In all these cases there is no reason whatsoever as to why the legal entity should not pay like any other private person. I will just give an illustration. A trustee is in possession of charity property. A stranger trespasses upon a portion of that property. The former brings a suit to eject him. Why should he be entitled to pay a lesser fee than any other ordinary person who is fighting a trespasser? The object of relieving the particular class of cases which I have excepted from the obligation to pay a large *ad valorem* fee is to enable a person in whom the property is not vested as the legal owner or who is not in custody as manager or superintendent to protect the interests of the charity. In all these cases, a dissatisfied person interested in a particular charity comes in for the purpose of rectifying the negligent conduct of the person who is bound to look after the charity as its trustee or manager as the case may be. Therefore, I do not think there is any justification whatsoever for extending the scope of the exception.

"Again, Sir, with regard to suits to establish 'the right of trusteeship,' i.e., the plaintiff's personal right of trusteeship, why should he not pay fees on the value of the subject matter if it is capable of valuation? Except in one case where a trustee is dismissed, say by the Devasthanam Committee and another trustee is appointed and the dismissed trustee either denies the right of the Devasthanam Committee to dismiss him or denies the legality or regularity of the proceedings of the committee and contends that the person

[Mr. K. Srinivasa Ayyangar]

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Clause 4—*cont.*

appointed in his stead is not entitled to the custody of the endowment, there is really no hardship. With regard to this particular case it must be provided for in the revision of the Religious Endowments Act. The provision may be that on an application to the court, with the order of dismissal from the committee, the dismissed trustee who continues in possession shall be ejected. There will then be no difficulty.

“I want to draw the attention of the House to one other matter only. My honourable friend Mr. Arumainatha Pillai has made no provision for charging any fees with regard to suits, which he wants excepted. There is no amendment in Schedules I or II; the result will be that the suits coming under his category will have to pay no fee at all. It is not a mere formal or a consequential amendment. I therefore submit that this motion ought not to be carried. I hope he will withdraw it.”

Mr. T. ARUMAINATHA PILLAI:—“Sir, so far as the Hon’ble the Law Member is concerned, he has not really replied to the questions raised in this amendment. He has practically admitted the deficiency of his exception.”

12-30 p.m.

The Hon’ble Mr. K. SRINIVASA AYYANGAR (*interrupting*):—“That was only with regard to one kind of suits, Sir, and there is absolutely no meaning in excepting all other suits on that ground.”

Mr. T. ARUMAINATHA PILLAI (*continuing*):—“So far as the Hon’ble the Law Member is concerned, he has practically admitted the justness of the claim in respect of one set of suits that was referred to by my honourable friend Mr. Somasundaram Pillai. So far as the other sets of suits are concerned, he went on saying that in regard to trustees one does not see any reason why a trustee should not, if he wants to file a suit against his co-trustees, be asked to pay the regular stamp duty because the other persons would legally be the persons who would be entitled to look after the properties. I would put this question to the honourable member. If there are three trustees, and if two trustees eject the other trustees and the other man is obliged to file a suit, surely the honourable member would not contend that the property is vested only in two of them but not in the third. All the properties are vested in all the trustees. Every trustee is a man in whom the property is legally vested even according to the Hon’ble the Law Member. And this man goes to the Court and says, ‘I am one of the legally established trustees and I have got as much right as the other persons and therefore I am entitled to file a suit.’ Is the Hon’ble the Law Member right in saying ‘So far as you are concerned, go and file a suit, but pay the *ad valorem* fee upon the valuation of the property’? I would therefore submit that so far as that class of cases is concerned the Hon’ble the Law Member has not really met the difficulty. He only took the objection referred to by me just now. Again, the Hon’ble the Law Member has put in a proposition, namely, supposing that a stranger trespassed into one portion of trust properties, into a land, say, an acre in extent, there would be no reason why the owner (trustee) should be excepted from paying the full court fees. Suppose all the tenants join together and refuse to pay rent; some strangers get into the temple; or that a body of persons get into possession of the trust properties of the temple including *vahanams* and ornaments, etc. Even in such a case the Hon’ble the Law Member says: ‘They are trespassers. You need

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[Mr. T. Arumainatha Pillai]

Clause 4—*cont.*

not go to court when they have got possession. But when you do, you must pay the regular stamp duty.' I therefore do not think that the honourable member has really understood the scope of my amendment.

"The Hon'ble the Law Member really made a point against me when he said that having put forward this amendment, I ought to have brought in an amendment to the schedule wherein the table of fixed fees is put in with increased fee as well. If this amendment is accepted—on the Hon'ble the Law Member's own admission there are certain classes of suits which clause 4 would not really cover—I say there would be no difficulty at all in adding that amendment too. I think it would be only a verbal amendment to Schedule II where the table of fixed fees is put in."

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*interrupting*):—"It will not be a verbal amendment, Sir. We have got to fix what that fee is to be. It is not a verbal or consequential amendment, and so far as I know, the fee may be fixed at Rs. 500 or Re. 1."

Mr. T. ARUMAINATHA PILLAI (*continuing*):—"I may only tell the honourable member that he has raised the fee for suits for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908, to Rs. 50. So far as this thing is concerned, he has only to add the words mentioned in my amendment as a clause in page 15 of Schedule II."

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*interrupting*):—"I do not know whether Mr. Arumainatha Pillai wants Rs. 50 as the Court fee to be fixed for the class of suits he mentions, or Rs. 500 or Re. 1."

Mr. T. ARUMAINATHA PILLAI (*continuing*):—"I have admitted the justness of the criticism of the Hon'ble the Law Member so far as that portion of his criticism is concerned. I am only telling him that it is only a technical criticism and nothing more. I would only suggest that a small amendment may be made in item 17 of Schedule II which can be easily done. I submit that the Hon'ble the Law Member has not really met my argument, and I would leave it to the House to decide whether my amendment should be or should not be accepted."

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"I have only one word to say, Sir. The total number of suits filed of the kind referred to is about 67. I only want the House to know this fact. If the House wants to make further amendments for this purpose, it can do so."

The amendment (No. 6) was put to the House and lost.

Amendment 7.

The following amendment standing in the name of Mr. P. Siva Rao was not moved, the honourable member not being in his place, and it was therefore deemed to have been withdrawn:—

"7. Add the following sub-clause:—

'In section 7 (iv) of the principal Act omit sub-clause (b) and the following words shall be added as sub-clause (f):—

"In suits to enforce the right to share in any property on the ground that it is joint family property, according to the value of the separated share claimed therein." "

Clause 4 was then put to the House and passed and added to the Bill.

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CLAUSE 5.

Clause 5 was then put to the House and passed and added to the Bill.

NEW CLAUSE AFTER CLAUSE 5.

Amendment 8.

Rao Bahadur T. A. RAMALINGA CHETTIYAR :—" Mr. President, the amendment I beg to move is this—

' 8. *Insert the following as a new clause after clause 5 :—*

" *The following shall be added at the end of the first paragraph of sub-section 7 (iv) of the principal Act :—*

' *Provided that in suit coming under sub-clauses (c) and (d), in cases where the relief sought is with reference to any land, and those coming under sub-clause (e), such valuation shall not be less than half the value of the land calculated according to the next succeeding clause.*' "

" Sir, this amendment proposes to remedy an anomaly in the present Act. Mr. T. C. Srinivasa Ayyangar was saying just a few minutes back that the Act as it stands was doing a lot of injustice. The suits that really take up the time of the courts are taxed very lightly, and these are suits for declaration and injunction. It is in these suits that the question of title really arises, and large questions of title come up for decision, whereas the fee that is to be paid on money suits which do not take up much time of the courts is very heavy. Mr. T. C. Srinivasa Ayyangar said that the Act ought to be amended so as to make the principle of taxation, as applied to these suits, equitable. This amendment, which I have given notice of, is one which tends in a small way to rectify the anomaly and put matters on an equitable basis. From the original Bill circulated, it would appear that the Government itself was aware of this position. From the report of the Select Committee it would appear that the said Committee found difficulty in framing a satisfactory rule for fixing the valuation of suits mentioned in clause IV of section 7, and so they thought that the best thing would be to leave them alone. I think it would result in inequality if no remedy is to be found, and I have accordingly tabled this amendment. My amendment, and the next one given notice of by Mr. Somasundaram Pillai, go to a large extent in meeting the difficulty mentioned by the Select Committee. Suits in connexion with rights on land which mainly occupy the time of the courts are generally brought in not in a direct way of a suit for possession, but mostly in an indirect way as suits for declaration or injunction. A person who wants possession of land does not say so in his suit, but generally asks for a declaration of title and thus avoids paying *ad valorem* fee. The kind of suits that I refer to are mentioned in sub-clauses (c) and (d) of clause (iv) of section 7. The Select Committee found difficulty because clause (iv) of section 7 mentions suits for declaration and injunction when consequential relief is claimed not only with reference to land but with reference to other matters as well. In my amendment I have restricted myself to cases where the relief sought is with reference to any land and those coming under sub-clause (e). If my amendment is accepted, it will be easy to value the suits. It would be hard in some cases to value all such suits for declaration, etc., on the basis of suits for possession, and it is necessary to avoid that hardship, and, it may be, in some cases they are suits really for injunction. But suits for injunction are mostly camouflaged suits for possession or title, and I

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New clause after clause 5—*cont.*

submit that such suits must be valued on the basis of title or possession of land, that is, at not less than half the value of the land. So, Sir, the difficulty mentioned by the Select Committee may be obviated by the amendment I have proposed. I think there is no difficulty in accepting this, and I hope that the Hon'ble the Law Member will accept my amendment."

Mr. T. C. SRINIVASA AYYANGAR:—"I second this amendment, Sir. There is a great deal of justice in the amendment which my honourable friend Mr. Ramalinga Chettiyar has just moved. The object of the Government is to get money, and this amendment will enable the Government to get money with justice. As I submitted in connexion with another amendment, the best part of the time of the courts is taken up in trying suits of this description, and as my honourable friend Mr. Ramalinga Chettiyar stated, certain suits relating to land are brought in the indirect method of praying only for a declaration and sometimes with an added prayer for injunction with a view to escaping full court fee. According to the law as it stands, they can value the suits falling within some of the sub-clauses of section 7, as they like, and pay a ridiculously low court fee therefor, and occupy the time of the courts to any extent. I hope the amendment will commend itself to the Council."

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"I accept, Sir, the principle of this amendment, and I myself wanted to provide something like it. The two honourable members who have spoken have explained the necessity for adequate valuation of this class of suits. I would only ask, merely as a verbal amendment, to substitute the words 'immovable property' for the word 'land' wherever the latter word occurs, because I do not see any reason why we should except houses and gardens. May I have your permission, Sir, to move this amendment?"

The Hon'ble Khan Bahadur MUHAMMAD HABIB-UL-LAH SAHIB Bahadur:—"I second the amendment."

Rao Bahadur T. A. RAMALINGA CHETTIYAR:—"I accept the amendment, Sir."

The House passed the amendment and resumed discussion of the proposed new clause as amended.

Rai Bahadur T. M. NARASIMHACHARLU:—"Sir, I have to oppose this amendment as amended. The object of this is to enhance the present duty on court fees. I submit that the Council should not out-herod Herod. This is not the only case in which the inequitable distribution with reference to court fees exists. There are several other clauses where such inequality exists. If a comprehensive revision is undertaken so that court fees may be levied according to the time involved, according to the value involved and according to trouble that has been taken by the Court, I would quite understand that. But I quite fail to see why when the Government themselves did not propose to revise.—"

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*interrupting*):—"Sir, the Government did propose and there was a clause practically to this effect in my original Bill."

Rai Bahadur T. M. NARASIMHACHARLU (*continuing*):—"Yes, Sir. But when the Select Committee did not wish to commit itself to such a large

[Mr. T. M. Narasimhacharlu]

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New clause after clause 5—*cont.*

question in a purely fiscal measure like this, I do not see any reason why we should go beyond the Select Committee and commit ourselves to an important class of suits so as to levy greater fees out of them. I submit it is quite objectionable that we should deal only with two or three classes of suits, leaving out the rest. There is yet another thing in this. I do not understand the word 'Clause'. Is it the clause next following that has been omitted? What is the meaning of that? This is the result of such a hasty measure. My third objection is: I think that the Select Committee did not offer to commit itself to a consideration of the revision on the basis of equity in the distribution of court fees; and if we should do this, I think, Sir, this requires a publication of the Bill itself in order that the public may have the benefit of knowing what is going on in the Council, and that they may have an opportunity of laying before the Council or the Government, the objectionable feature of this clause. The Select Committee said that as the Bill did not undergo any substantial alteration they did not think there was any necessity for republication. This, Sir, is reviving a very important alteration which has been omitted by the Select Committee. Consequently, I think, Sir, that a republication of the Bill ought to be undertaken now."

Mr. N. A. V. SOMASUNDARAM PILLAI:—"In the original Bill there was this provision—Section 7, clause IV (a). 'In suits for movable property where the subject has no market value, as, for instance, in the case of documents relating to title'. The original proposal was to levy the fees according to the value of the subject-matter and that was more reasonable. When the matter went before the Select Committee they thought this valuation was very difficult and they say:

'We think that several suits of the classes referred to in clause 7 of the Bill are difficult of valuation and that the amendment proposed in clause 7 of the Bill would lead to unnecessary contest and waste of time in courts. We therefore omitted clause 7 of the Bill.'

"There is really no difficulty at all when a discretion is given to the plaintiff to value the suit according to his sweet will and pleasure. But this amendment imposes a restriction upon his will by laying down that the amount should not be less than half the value of the land. Therefore there is little or no difficulty whatever. If it was the original thing, even for a suit on a stamp of six annas, the whole time of the court would have to be wasted in addition to the annoyance caused to the party and the witnesses. In the mufassal, a large majority of the suits are really for petty matters. The property may be worth a lakh of rupees and the plaintiff may only have a small claim against it, and he may choose to pay a court fee on Rs. 50 or Rs. 100. In such a case it is really a waste of the time of the court and public money that a restriction like this should be enacted by which the plaintiff's discretion would be restricted. With these words, Mr. President, I support the amendment as amended. Of course, instead of 'land' it should be 'immovable property'."

Diwan Bahadur M. KRISHNAN NAYAR:—"Sir, I am very sorry that I have to oppose the motion of my friend Mr. Ramalinga Chettiyar. I confess that I am surprised that the Hon'ble the Law Member has seen fit to accept the amendment. Practically this is reintroducing a provision which was deliberately omitted and that unanimously by the

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[Mr. M. Krishnan Nayar]

New clause after clause 5—*cont.*

members of the Select Committee, including the Law Member. What the Select Committee say about this provision is this:

'We think that several suits of the classes referred in clause 7 of the Bill are difficult of valuation and that the amendment proposed in clause 7 of the Bill would lead to unnecessary contest and waste of time in courts. When this is omitted, clause 6 of the Bill becomes unnecessary. It is also therefore omitted.'

"Clause 6 practically is sought to be reintroduced by this amendment. So that, after having deliberately omitted clause 6 in the Select Committee, this amendment is moved by which the omitted clause is practically reintroduced; and the Hon'ble the Law Member coolly accepts it., the reason being that it was in the original Bill. The only argument advanced in support of this particular amendment by my friends Mr. Ramalinga Chettiyar and Mr. Srinivasa Ayyangar is that it is sought to remove the inequality that exists in the Court Fees Act. My friend the Hon'ble the Law Member has deliberately stated in the Objects and Reasons of this Bill that this is not intended to reconcile the conflicting rulings of the High Court, and that its only object is to raise money. I see no reason for this change of opinion. Of course, there are occasions when one's opinion has to be changed; but there should be a limit to it. There is absolutely no reason why the Council should go beyond the recommendations of the Select Committee. I must therefore oppose the amendment."

Mr. C. V. VENKATARAMANA AYYANGAR:—"I am also opposing this amendment, Sir. The Hon'ble the Law Member said he was practically introducing the Bill as it was introduced. I am surprised to find that the Hon'ble Mr. Krishnan Nayar appears to agree to the view. My view is that the present clause is much worse than the Bill as it originally stood. I do not know whether my friend Mr. Ramalingam Chettiyar has gone into the various difficulties in which suits for injunction would be placed. So far as easements are concerned, they will also be with reference to the immovable property. If I want a right of way or ventilation from a particular window, they will also be with reference to a land or house. The result would be practically to put an end to such suits, as for injunction, for easement, etc. I would therefore submit that the amendment of the kind proposed is more comprehensive and repressive than the original Bill itself. And I agree with Mr. Narasimhachariu when he says that it needs republication so that the public as well as ourselves would have an opportunity of considering the measure well. If it is passed, I would submit that it only leads to complications, and it will be a source of annoyance to litigants. I would ask if this is only a measure to raise money, if that could be done by making the whole thing as complicated as possible. It may perhaps be well for lawyers in Madras—and many of them may be generally lawyers for millionaires—but the lawyers in the mufassal conduct only small suits brought by poor clients. I am therefore unable to support the amendment."

Mr. T. SIVASANKARAM PILLAI:—"Sir, I think I have to oppose this amendment also. The provision in the original Act is that
1 p.m. the plaintiff shall be at liberty to value the relief claimed just as he pleases. Now, I do not think matters will be improved by putting in this amendment there. Let us take a concrete case. Suppose there is the right of discharging water from a certain spout of a neighbouring house. The area over which the water proceeding from the spout will spread will be

[Mr. T. Sivasankaram Pillai]

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New clause after clause 5—*cont.*

a circle of a certain diameter. How can you value this piece of land? It may be that the plaintiff values it at Rs. 5. How can the court correct the valuation, or how can the adversary object? Whether the court takes objection or the adversary objects to it, it will have to be settled arbitrarily. So, considering all these things, the original Act was worded in the manner in which it is. Then, Sir, in a big zemindari which is worth, say, Rs. 10 crores there is a right of way. There is some trespasser who wants to trespass on the land, and the zamindar wants to put in a suit to obtain an injunction. Would it be just to require the zamindar to pay court fees on Rs. 5 crores? The man, having been in possession of the land, has a right to be maintained in it. If such a heavy penalty is to be paid if he wants to get redress, he would probably get 500 or 600 budmashes collected just to create a disturbance and that will lead to rioting. Is that consequence desirable from accepting an amendment of this kind? So I would urge that this may be rejected by the Council."

MR. T. ARUMAINATHA PILLAI:—"I am sorry to see that the Hon'ble the Law Member has accepted the amendment proposed. My honourable friend Mr. C. V. Venkataramana Ayyangar has cited an instance. I would take the same case also and press it on the attention of the Hon'ble the Law Member and ask him to see whether it would not create a very great injustice on the part of the poor people, leaving apart rich men. Suppose there is a poor man on one side and a rich man on the other who on his own land tries to put up a two-storeyed building obstructing the windows of the poor man's house. If the poor man is to file a suit for injunction for easement that he is entitled to his windows being left intact, what is the valuation proposed in this? It is, 'such valuation shall not be less than half the value of the immovable property calculated according to the next succeeding clause.' Then, Sir, how is it possible for this man to fix any valuation so far as these two or three windows are concerned. It is only deliberately that the Legislature worded the clauses as they are when they passed the Court Fees Act of 1870 and deliberately allowed the plaintiff himself to fix the valuation as he pleased, because they found it impossible for the court to fix any definite valuation upon these things; and you will also find that there are judicial decisions supporting this view. I believe I am correct in saying that so far as Bombay is concerned they have arrived at the decision that it is utterly impossible to ask the plaintiff to fix any definite valuation upon these plaints, and therefore it is far better to leave the valuation to the plaintiff. It will be creating a very great hardship upon the poor people just for the sake of what is contained in clause (c) to obtain a declaratory order or in clause (d) to obtain an injunction. There are very few suits which come under clause (c). In order to get as much money as possible, I would urge strongly upon the Hon'ble the Law Member, lawyer as he is, not to jeopardise the rights of the poor people. Therefore, I am bound to oppose the amendment in spite of the acceptance of it by the Hon'ble the Law Member."

MR. O. TANIKACHALA CHETTIYAR:—"Sir, I could appreciate the point raised by my friend Mr. Ramalinga Chettiyar, and it is but right that in cases covered by sub-clause (c) of clause 4 of section 7 of the Court Fees Act that those who seek such relief on the basis of the real value of the property,

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New clause after clause 5—*cont.*

and not upon the nominal value, should be given liberty to put in their own valuation. At the same time, I do feel that in the case of sub-clause (d) to obtain an injunction, to require the party to pay a fee on half the value of the property is a very great hardship. For instance, a person whose house is worth Rs. 20,000 may have a window blocked up by a neighbour, and for asserting his right and obtaining an injunction in respect thereof, it would be a hardship if half the property should be the basis for the payment of stamps while, at the same time, all other suits which come under clause (iii) of section 7, where consequential relief is asked for are settled by questions of title which are gone into. This matter was considered by the Select Committee, and it was not that it was completely dropped. The Hon'ble the Law Member said that probably something more elaborate would have to be done and another Act brought in for the purpose of raising revenue. In fact one of the suggestions made was that in some of these suits which were valued at Rs. 50 or Rs. 100 a sitting fee of Rs. 10 or Rs. 20 might be collected. But, however, inasmuch as the Hon'ble the Law Member has seen proper to accept the amendment proposed by Mr. Ramalinga Chettiyar, I am also in favour of accepting his amendment in so far as it relates to sub-clause (c), but not in reference to sub-clause (d). But if from Mr. Ramalinga Chettiyar's amendment the words 'and (d)' are deleted, I am sure there will be no difficulty in getting support for this amendment. With your permission, Sir, I intend to move that these words 'and (d)' occurring in the first line of Mr. Ramalinga Chettiyar's amendment, be omitted."

The Hon'ble the PRESIDENT:—"Does anybody object on the score of want of notice to the amendment going forward?"

Rai Bahadur T. M. NARASIMHACHARLU:—"I object to it, Sir."

The Hon'ble the PRESIDENT:—"I overrule the objection. Does anybody second that amendment?"

Mr. A. T. Muttukumaraswami Chettiyar seconded the amendment.

Rao Bahadur T. A. RAMALINGA CHETTIYAR:—"I accept the amendment."

Mr. T. C. SRINIVASA AYYANGAR:—"There are three sub-clauses in the amendment originally proposed by my friend Mr. Ramalinga Chettiyar and that amendment with a slight modification introduced by the Hon'ble the Law Member is before the House. The amendment now proposed to that amendment is to retain sub-clause (c) and to delete the reference to sub-clause (d). In clause (iv) of section 7 of the Court Fees Act as it now stands, sub-clause (c) is 'to obtain a declaratory decree or order, where consequential relief is prayed'; sub-clause (d) is 'to obtain an injunction'; and sub-clause (e) is 'for a right to some benefit (not herein otherwise provided for) to arise out of land.' If on account of any difficulty relating to injunction' reference to sub-clause (d) is to be deleted, there would be much greater reason to delete all reference to sub-clause (e). Because in the order of difficulties, as we proceed from sub-clause (c) to (e), the difficulty is increased. In the matter of obtaining a declaratory decree with reference to immovable properties, the difficulties may not be very many. But in cases relating to sub-clause (d) the difficulties, if they relate to mere incorporeal rights, will be many. But sub-clause (e) is something like a residuary clause

[Mr. T. C. Srinivasa Ayyangar]

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New clause after clause 5—*cont.*

with reference to previous sub-clauses. So, I should like to know from the mover of this amendment, if he desires to omit the reference only to sub-clause (d) and to retain the sub-clause (e)."

Rao Bahadur A. S. KRISHNA RAO PANTULU:—"Sir, it only follows as a necessary consequence of the position taken by my honourable friend Mr. Tanikachala Chettiyar that a reference to sub-clause (e) should also go out. He has stated that there may be some justification for inserting this provision in the case of suits wherein a declaratory decree is asked for and that in such cases, the valuation may be fixed as suggested in this clause. If, as he suggests in the case of suits for injunction, sub-clause (d) should go, one would ask naturally whether suits wherein some benefit arising out of land is asked for are to be placed in a worse position. There is much greater reason for deleting all reference to sub-clause (e) than even to sub-clause (d). It will be remembered that in the case of benefits arising out of land, while an injunction specifically comes under sub-clause (d) all rights which do not affect the value of the property but which involve some relief having a bearing upon land would come under sub-clause (e), viz., all benefits arising out of land not provided for elsewhere. Therefore the greatest difficulty exists in applying this rule in the case of sub-clause (e). The difficulty will next have to be considered in the case of sub-clause (d). So far as he has agreed to the deletion of sub-clause (d), I think it is necessary to have all reference to sub-clause (e) also deleted. Therefore with your kind permission, Sir, I move this amendment—."

The Hon'ble the PRESIDENT:—"The amendment on hand must be disposed of before any other can be considered."

Rao Bahadur A. S. KRISHNA RAO PANTULU:—"Therefore, I would submit that unless sub-clause (e) is also deleted, there is no meaning in accepting this motion to delete sub-clause (d). The whole amendment, I would submit, is objectionable, because it violates the very principle which was unanimously accepted by the Select Committee. They made a reference to it saying at the same time that they did not want a republication of the Bill because there were no material changes made. I am very sorry that my honourable friend Mr. Ramalinga Chettiyar has thought it fit to bring up this amendment and thereby give an opportunity to the Hon'ble the Law Member to make matters really harsher, by altering the word 'land' to 'immovable property', so as to bring suits relating to buildings within its scope. Though the Government were prepared to modify the position originally taken and though they probably paid consideration to some of the objections raised at the opening meeting regarding this, Bill and though my honourable friend Mr. Ramalinga Chettiyar himself raised various objections to the principle of the Bill in so far as it proceeded on lines which are oppressive or harsh to the litigant, that he should have brought up this amendment and thereby enabled the Hon'ble the Law Member to make it harsher than he himself would have thought it fit to make, is really unfortunate. I would therefore oppose the whole amendment if it should go as it is. In any event it is objectionable to have any reference to sub-clause (e), in so far as the deletion of sub-clause (d) has been raised."

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New clause after clause 5—*cont.*

The Hon'ble the PRESIDENT :—" I think it would be good if the House clearly understands what is before it. The honourable member Rao Bahadur T. A. Ramalingam Chettiyar proposed to insert the following as a new clause after clause 5 :—

1-15 p.m.

'The following shall be added at the end of the first paragraph of sub-section 7 (iv) of the principal Act :—

"Provided that in suits coming under sub-clauses (c) and (d), in cases where the relief sought is with reference to any land, and those coming under sub-clause (e), such valuation shall not be less than half the value of the land calculated according to the next succeeding clause".

"In that amendment the Hon'ble the Law Member proposed to substitute 'immovable property' for 'land', wherever the word occurred and the proposal was accepted: so that the House then had before it the following amendment :—

'The following shall be added at the end of the first paragraph of sub-section 7 (iv) of the principal Act :—

"Provided that in suits coming under sub-clauses (c) and (d), in cases where the relief sought is with reference to any immovable property, and those coming under sub-clause (e), such valuation shall not be less than half the value of the immovable property calculated according to the next succeeding clause".

"Later, the honourable member Mr. Tanikachala Chettiyar has put forward an amendment to substitute for the words 'sub-clauses (c) and (d)' the words 'sub-clause (c)'. That is the amendment now before the House."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" Mr. President, if I rise now at all, I rise only to explain my position. Originally I had proposed that all these suits should be valued and all these suits are valued for the purpose of jurisdiction and for the purpose of the fees of the Counsel."

Mr. T. SIVASANKARAM PILLAI (*interrupting*) :—" I take exception to the statement, Sir. The value for the jurisdiction is one and the same so far as section 7 (iv) is concerned, and it is not correct, therefore, to say that for the purpose of jurisdiction they are valued separately."

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*continuing*) :—" I did not say it. They are valued for the purpose of jurisdiction; that is, the party is able to value them. It is not impossible to value them. The value as stated by the party is the value for the purpose of court fees. So it is not correct to say that it is impossible to value them. It is expected that the High Court will be in a position to frame rules for the purpose of valuing such suits. Then if the suits can be valued why not they be properly valued?

"Then, Sir, in the Select Committee there was some difficulty felt in making rules for a precise valuation and the clause was omitted. I do not claim, Sir, a monopoly of all intelligence nor do I claim a monopoly for even the Select Committee. The proposal of Mr. Ramalingam Chettiyar did not strike me and no such proposal was placed before the Committee. Mr. Ramalingam Chettiyar now gives a standard of valuation which can be accepted without difficulty, and that was why I was in a position to accept it. It is quite possible to put extreme cases, and there may be extreme cases. Supposing for instance there is a dispute against a whole zamindari, somebody sets up a title to it. You ask for a declaration of title or you may ask for an injunction only which again may necessitate the setting of the title. Why should you not pay for it? We know of cases where valuable forests or hills are in dispute and possession is asserted by both sides. Here the half-fee is too little. Likewise there may be extreme cases where in a large house a small window or a few

[Mr. K. Srinivasa Ayyangar]

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New clause after clause 5—*cont.*

inches of space may be obstructed where a half-fee may be too much. As I said, it is quite possible to put extreme cases, but after all you can have only a rule which would equitably provide for the generality of cases. That is the reason for my accepting the amendment with regard to land. There is no subtle cunning in my substituting 'immovable property' for land as some members appeared to suspect. The word 'immovable property' is ordinarily applicable to land, houses or gardens. In this antiquated Act, the Court Fees Act, we have the expression 'land, gardens and houses'. Why should cases of declaration of title and consequential relief, cases of injunction, with regard to land alone should be protected and not those with regard to houses and gardens. That is why I thought that a comprehensive expression instead of land, an expression which is defined in the General Clauses Act, may be inserted. I submit, Sir, that the original motion of Mr. Ramalingam Chettiyyar was quite proper and the fee should be paid. For, as has been pointed out by Mr. T. C. Srinivasa Ayyangar, cases of this sort take even more time than suits for possession and, in almost every case, the question of title arises. I am not able to see why half the value at least should not be insisted upon in such cases."

The Hon'ble Sir LIONEL DAVIDSON:—"I move that the question be now put."

The Hon'ble the PRESIDENT:—"I am afraid I cannot accept that motion just now. I fear there is some amount of confusion which has to be cleared up."

Diwan Bahadur M. KRISHNAN NAYAR:—"If I may say so, Sir, without any disrespect to you, we are all in confusion now, at any rate, many of us are. The amendment as it stands before the House is--

'That the following shall be added at the end of the first paragraph of sub-section 7 (iv) of the principal Act:—

"Provided that in suits coming under sub-clause (c) in cases where the relief sought is with reference to any immovable property, and those coming under sub-clause (e) such valuation shall not be less than half the value of the immovable property calculated according to the next succeeding clause."

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"Is it quite accurate, Sir? I thought the amendment now before the House was to *substitute* 'sub-clause (c)' for 'sub-clauses (c) and (d)'. The original proposition of Mr. Ramalingam Chettiyyar is not before the House."

Diwan Bahadur M. KRISHNAN NAYAR:—"That is exactly the same as the position stated by me. Mr. Tanikachalam Chettiyyar's latest amendment was to omit the reference to sub-clause (d) so that the proposition under discussion is what I have stated it to be. If you will kindly allow me, Sir, I shall move an amendment which I believe will be acceptable to a very large portion of the House including my friends—Mr. Ramalingam Chettiyyar and Mr. Tanikachala Chettiyyar."

The Hon'ble the PRESIDENT:—"I think the honourable member cannot move his amendment now as a previous amendment holds the field. But I have no objection to his stating what his intentions are in regard to a contingency which may arise hereafter."

Diwan Bahadur M. KRISHNAN NAYAR:—"My intentions are these. I myself was one of those who objected to the amendment as moved by my honourable friend Mr. Ramalingam Chettiyyar. Now a further amendment is

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[Mr. M. Krishnan Nayar]

New clause after clause 5—*cont.*

moved by Mr. Tanikachala Chettiyar to confine the operation of this section to sub-clauses (c) and (e). My intention is to limit it to sub-clause (c) and to take away sub-clause (e) also from this amendment. My intention, in other words, is to restrict the operation of the clause to sub-clause (c) of the principal Act and to omit it with reference to both (d) and (e). As the discussion develops, I may, with your kind permission, beg leave to move the amendment which has arisen out of the discussion that has taken place."

The Hon'ble the PRESIDENT:—"I think it will be convenient to the House to know that the only issue now before it is the deletion of the reference to sub-clause (d). If that is disposed of, any honourable Member may move a further amendment if he so wishes."

Rao Bahadur T. A. RAMALINGA CHETTIYAR:—"Sir, in fact, I quite agree with the Hon'ble the Law Member in saying that these cases should also be required to pay the fees and it is also my view that in a few cases it would work a great hardship. Now, I find that the House wants to safeguard even the very small number of suits which may possibly be affected by this amendment. In view of that fact, I agree to the amendment now proposed."

The Hon'ble the PRESIDENT:—"The honourable member has already told us that he has accepted the amendment."

Rao Bahadur T. A. RAMALINGAM CHETTIYAR:—"I now gave my reason for it."

The Hon'ble the PRESIDENT:—"The honourable member cannot speak twice on the same amendment. I will now put the amendment to the House."

Mr. Tanikachala Chettiyar's amendment, that for 'sub-clauses (c) and (d)' the words 'sub-clause (c)' be *substituted*, was then put and carried.

The Hon'ble the PRESIDENT:—"The clause as amended will read thus:—

The following shall be added at the end of the first paragraph of sub-section 7 (iv) of the principal Act:—

"Provided that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any immovable property, and those coming under sub-clause (e), such valuation shall not be less than half the value of the immovable property calculated according to the next succeeding clause." "

Rao Bahadur A. S. KRISHNA RAO PANTULU:—"I already indicated my intention, Sir, to move an amendment asking for the deletion of the words 'and those coming under sub-clause (e)' and you were kind enough to tell me, Sir, then that I might move it after the amendment then before us had been disposed of. I now, therefore, move formally that the words 'and those coming under sub-clause (e)' be omitted.

"The effect of it is that this new amendment will have operation so far as declaratory suits are concerned and take away all objectionable portions regarding benefits to arise out of land and those included of under sub-clause (d). As the matter has already been discussed I need not take the time of the Council by making any elaborate remarks."

Mr. C. V. VENKATARAMANA AYYANGAR:—"I second it, Sir."

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New clause after clause 5—*cont.*

Diwan Bahadur M. KRISHNAN NAYAR :—" Sir, I wanted your permission to move an identical amendment, and now that Mr. Krishna Rao has moved this amendment, I believe much of the

1-30 p.m. objection that was raised to the amendment as originally proposed by Mr. Ramalinga Chettiyar will disappear. I do not think there can be any objection to tax the suits that come under sub-clause (c) to obtain a declaratory decree or order so that, as it stands now, I think the amendment that is proposed by Mr. Krishna Rao is a very reasonable one, and I am very glad to give my support to it."

Rao Bahadur T. A. RAMALINGA CHETTIYAR :—" I accept the amendment now moved by Mr. A. S. Krishna Rao also."

The Hon'ble the PRESIDENT :—" I will now put that amendment to the House. The amendment is to omit the words 'and those coming under sub-clause (e)'."

The amendment was put and carried.

The Hon'ble the PRESIDENT :—" The motion will now finally stand as follows :—

'Insert the following as a new clause after clause 5 :—

"The following shall be added at the end of the first paragraph of sub-section 7 (iv) of the principal Act :—

'Provided that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any immovable property, such valuation shall not be less than half the value of the immovable property calculated according to the next succeeding clause.' "

The motion was then put and carried and the new clause inserted after clause 5 and added to the Bill.

CLAUSE 6.

Amendment 9.

Mr. N. A. V. SOMASUNDARAM PILLAI :—" Mr. President, I beg to move the following amendment :—

'9. Omit "(Omitted)" and insert the following :—

"In section 7 the following clause shall be added as iv-a :—

'(iv-a) In a suit—

for cancellation of a decree or other document according to the amount for which the decree is passed or other document is executed.' "

"My reason for making this motion is this. In the original Act there is no special provision for court fees to be paid in suits for cancellation of a decree or other document. No doubt it was brought under some other clause of section 7, clause (iv), viz., in suits to obtain a declaratory decree or order, where consequential relief is claimed. In the Bill as originally drafted there was a provision made for this in clause 7 (c), viz., (e) in a suit for cancellation of a decree or other document, according to the value of the subject matter. When the matter went up before the Select Committee, they said that it was difficult of valuation and therefore it would be better that that provision must be omitted. I, for my part, cannot see any difficulty in valuing suits for cancellation of a decree or other document. So far as decrees are concerned, there is a certain amount for which the decree is passed. With regard to documents, there will be an amount mentioned in the document for which that document was executed. So if suits are brought simply for the cancellation of a decree or other document, there will be no reason why the plaintiff should not be asked to pay court fees on the amount for which the decree is

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[Mr. N. A. V. Somasundaram Pillai]

Clause 6—*cont.*

passed, or on the amount for which the document is executed. As a matter of fact, we see with regard to some suits in the mufassal as well as in the High Court that immediately after a decree is passed, or after executing a certain document, say for Rs. 10,000 or Rs. 5,000, the plaintiff comes forward with a suit in the Munsif's Court paying a court fee of about As. 6 or As. 12, saying that the document was taken by him without any consideration, or that the document is not valid and therefore it ought to be cancelled. As the Court Fees Act now stands, there is no separate provision for valuing suits of such a nature. Therefore the plaintiff is allowed to file a suit under section 7, sub-clause iv (c). Now, when the question is taken up with regard to the court fees on such suits and when there was an attempt in the original Bill to have this also included when it was said that it was difficult to value these suits according to the value of the subject matter, there is no reason at all for excluding these suits for cancellation of a decree or other document. The reason given by the Select Committee for removing these suits, though it may apply to other classes of suits, may not with equal force apply to suits for cancellation of a decree or other document. In these circumstances, I request that a new clause may be added, i.e., clause iv-a, including these suits and providing for the valuation of these suits according to the amount of the decree or of the document. In such cases the plaintiff cannot complain of any difficulty or hardship. He is a person against whom the Court has passed a decree, or he is the person who really executes a document for certain amount. If a suit is to be brought on the document so executed by him, the person in whose favour the document is executed will have to pay court fee on the whole amount for which it was executed. There is equally no reason why the person who executes the document, when he comes forward as a plaintiff to have a relief which is exactly the same as in a suit by the person in whose favour the document is executed, should go scot-free and tax the attention of the Court and waste the time of the Court by paying only a small court fee. I therefore move that this clause be added as clause iv-a to section 7."

Mr. T. C. Tangavelu Pillai seconded the motion.

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"Sir, I shall gladly accept this amendment too. This was one of the cases which I specifically provided for in my original Bill. But I am afraid this would require a little bit of change, for, all the decrees are not for money, or for property capable of being valued in money. That was really one of the difficulties in keeping on to the original draft of mine. If, for instance, a suit is for cancellation of a decree for money, or for property having a money value, or other documents securing money, or property having such value, the court fee should be according to the value or amount for which the decree was passed or the document executed. This point is clear now. But then the amendment as it stands will give rise to uncertainty. For instance, a decree may be for restitution of conjugal rights. There is no amount there. Again, the decree may be for an easement. There may be no amount fixed there also. If, as I believe, Mr. Somasundaram Pillai wants to confine himself to a decree for money, or for property having money value, I am not able to see why a person who wants to cancel it, or to relieve himself from liability or to get back property, should not pay on the amount decreed or property granted.

[Mr. K. Srinivasa Ayyangar] [13th March 1922]

Clause 6—*cont.*

I would, therefore, suggest it to Mr. Somasundaram Pillai, if he has no objection to amend his amendment in this way :—

‘ for cancellation of a decree for money or property or other document securing money or property having such value, according to the amount or the value of the property for which the decree is passed or the other document is executed.’

“That is how it would read.”

The Hon'ble the PRESIDENT :—“The honourable member Mr. Somasundaram Pillai had better withdraw his amendment, so that the Hon'ble the Law Member's amendment may go forward.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“Will you give me one minute, Sir, to write it down?”

The Hon'ble the PRESIDENT :—“The House will now adjourn for lunch.”

The House adjourned for lunch at 1-40 p.m. and re-assembled at 2-30 p.m. when the discussion on the Court Fees Act Amendment Bill was resumed.

The Hon'ble the PRESIDENT :—“It was understood that we should take up the Municipal Bill after lunch, but it would be better to proceed with the Court Fees Bill and finish it. Does the Hon'ble the Minister for Local Self-Government agree?”

The Hon'ble Mr. P. RAMARAYANINGAR :—“Yes, Sir.”

The Hon'ble the PRESIDENT :—“The House will now resume consideration of the Bill to amend the Court Fees Act. We were last dealing with Mr. N. A. V. Somasundaram Pillai's amendment.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“May I say a word, Sir? What I, Sir, suggest is this: In section 7 of the principal Act, the following clause shall be added as iv (a): ‘In a suit for the cancellation of a decree for money or other property having a money value or other document securing money or other property having such value according to the value of the subject matter of the suit; and such value shall be deemed to be, if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document executed. If a part of the decree or other document is sought to be cancelled such part of the amount or value of the property’ That is in order to have both the cancellation of the whole as well as a part. There was no provision before in regard to the part cancellation.”

The Hon'ble the PRESIDENT :—“Before we proceed further let us ascertain the wishes of the honourable member Mr. N. A. V. Somasundaram Pillai.”

Mr. N. A. V. SOMASUNDARAM PILLAI :—“In view of what has been suggested by the Hon'ble the Law Member I withdraw the motion made by me so that it may be easier for the Law Member's amendment to go in.”

The motion of Mr. N. A. V. Somasundaram Pillai was by leave withdrawn.

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Clause 6—*cont.*

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"I move, Sir, that for the words, 'for cancellation', etc., up to 'executed' as it stands here, the following be substituted :—

"In a suit for the cancellation of a decree for money or other property having a money value or other document securing money or other property having such value according to the value of the subject matter of the suit; and such value shall be deemed to be if the whole decree or other document is sought to be cancelled the amount or value of the property for which the decree was passed or the other document executed. If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property"

The Hon'ble Khan Bahadur MUHAMMAD HABIB-UL-LAH SAHIB Bahadur :—"I second it."

The Hon'ble the PRESIDENT :—"The motion before the House is—

In clause 6 *omit* the word, 'omitted', and *insert* the following :—

"In section 7 of the principal Act the following clause shall be added as iv (A): In a suit for the cancellation of a decree for money or other property having a money value or other document securing money or other property having such value, according to the value of the subject matter of the suit; and such value shall be, if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree is passed or the other document executed; if a part of the decree or other document is sought to be cancelled, such part of the amount or the value of the property"

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"In consonance with the wording of the Act itself, the words 'shall be' might be changed into, 'shall be deemed to be'."

The Hon'ble the PRESIDENT :—"All right."

Mr. C. V. VENKATARAMANA AYYANGAR :—"I want to say a few words in this connexion. I want to point out the difficulty which will be felt by accepting this amendment. Let me illustrate this.

2-45 p.m. Suppose a father or some guardian of a minor, whether real or nominal, executes a document as a guardian of the minor; the minor has become party to that document; suppose after the minor comes of age or during the minority, another guardian wants to file a suit to have the document cancelled. Is it necessary that he should pay the whole court fee upon the valuation given in the document? So any man who wants to put the minor into difficulty has only to put in the document a high value, so that the minor when he comes of age will have to pay court fee on the very high amount. We know that when minors are made defendants to suits, either some collusive defence will be put in or no defence will be set up. The sarishtadar or some other officer of the court is appointed as a guardian and in the usual course a decree is passed; and if the minor after he attains majority or during his minority somebody else wants to file a suit, court fees upon the high value that has been put in the decree have to be paid. These difficulties seem to be there and it is better that we do not accept this amendment. The matter was considered at great length by the Select Committee and the suggestion covered by this amendment was not accepted. If the Hon'ble the Law Member finds any difficulty in future in such matters, as he seems to have suggested in the Select Committee, he may bring in a Bill and after due consideration the Council may accept it then. Instead of that, even though for the sake of raising the pay of the village officers, to go so far as to increase

[Mr. C. V. Venkataramana Ayyangar]. [13th March 1922]

Clause 6—*cont.*

the court fees beyond what is recommended by the Select Committee or even to make an advance over the Hon'ble the Law Member's original Bill is not justifiable. It should be very much deprecated. I therefore oppose this amendment."

The motion was put and carried.

Clause 6 as amended was then passed and added to the Bill.

CLAUSE 8.

Amendment 10.

Mr. M. SURYANARAYANA PANTULU :—" May I inquire, Sir, as to whether it will not be convenient to have the amendment standing in my name taken before the amendment of Mr. Krishna Rao is taken ? "

The Hon'ble the PRESIDENT :—" I think we had better follow the agenda."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" Sir, I beg to move the following amendment :—

'10. *In line 39 substitute "fifteen" for "twenty."*'

" The present Act says that ten times the revenue payable should be taken as the value of the land, and in the case of land that is not permanently settled, five times the revenue payable should be taken as the value of the land for purposes of court fees. Under this Amendment Bill 20 times the revenue of the land which is permanently settled should be taken as the value of the land, and in the other case ten times the revenue is to be taken as the value. No doubt in the latter case the fees have been raised by cent per cent. But I think the exigencies of our financial position do not require that the same proportion should be observed in the other case also. Even if 15 times the revenue is taken into consideration, the increase will be by 50 per cent over the present rate. Even as matters stand at present, the disparity between the two cases is very much. It is five times in one case and ten times in the other. Simply because in the one case we are raising it by 100 per cent. we need not raise the other also in the same proportion. Let the increase be moderate in all cases. For these reasons, I move this amendment."

Mr. C. V. VENKATARAMANA AYYANGAR :—" I second it."

Rao Bahadur K. GOPALAKRISHNAYYA :—" Sir, I have also given notice of a similar amendment, and I have great pleasure in supporting the amendment moved by my friend Mr. Krishna Rao. Though we are agreed that there should be some increase in the court fees, I think the enhancement in the present case by 100 per cent is too high, and this House will be well advised to accept this amendment."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" Mr. President, I do not think that the proposal which I have made is really adequate. It ought to have been very, very much more, and I shall be glad to have the market value of the property for purposes of valuation of the suit. Out of nearly 4½ lakhs of cases, it is only about 25,000 that relate to immovable property, and it is the experience of every one that these suits for immovable property occupy the largest portion of the time of the courts. You go and value a particular suit for immovable property at five or ten times the revenue as the case may be, paying six or twelve annas, and then go on taking the time of the court for years together. Not merely is there the first court, but there

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Clause 8—*cont.*

is an appeal and also a second appeal in these cases. Let me just illustrate the position in which we now stand. With regard to the vast majority of the cases, as I said, nearly four lakhs and odd are money suits, that is, they have to pay on the actual value of the relief sought for. As to suits for land there is a conventional value adopted, which value is far, far below the real value of the relief they get. Is it just, I ask? It is not a question of raising the value cent per cent or 50 per cent. It is a question of their paying adequate court fees for the time they take in the courts, and in proportion to the real value of the relief they get. I will illustrate the position by taking two concrete cases. In one case the value of the land was put in at Rs. 686-8-0. The past mesne profits for three years, for which the suitor must pay the court fee at the outset, the plaintiff valued at Rs. 200. The suit was filed in 1902. He had the pleasure of fighting it out till the High Court finally got possession of the land in 1907, and promptly put in an execution petition for past profits claiming Rs. 75,510. Is it right that the man should recover the property whose profits for 10 years are taken to be Rs. 75,510, valuing it at Rs. 686-8-0, because he has to pay at five or ten times the revenue? In another case the value of the suit was Rs. 1,025. For future mesne profits and till he took possession, he got Rs. 22,335. It is the experience of almost every lawyer that the value of the land for purposes of court fees is far, far below the value of the relief that is claimed. Persons who sue for land get this exemption, and the vast majority of those who sue for money have to pay the court fee on the real value of the relief.

"Again, I am not able to see on what principle this 15 per cent is suggested. There is really no principle. I want, if possible, to bring the conventional value as far as possible to the level of the real value of the property. I therefore think that any reduction in the proposal which I have made will really be a bonus to a particular class of litigants at the expense of the other class of litigants."

MR. T. ARUMAINATHA PILLAI:—"Sir, I rise to support the amendment. The Hon'ble the Law Member cited two cases wherein the mesne profits rose on account of the long lapse of the period between the institution of the suit and the disposal of the same, and said that it was really cheating the Government by not paying the adequate court fees. But the Hon'ble the Law Member seems to have forgotten that in the Act as amended now, he has also provided for such evasions."

THE HON'BLE MR. K. SRINIVASA AYYANGAR (*interrupting*):—"I was speaking in connexion with the profits accrued and the value of the land. If the profits amounted to Rs. 75,000, what justification is there for valuing the land at Rs. 600?"

MR. T. ARUMAINATHA PILLAI (*continuing*):—"So far as the enormous mesne profits are concerned, they are now provided in the Bill itself. They will have to shell out a large amount in the shape of court fee before they can collect their enormous mesne profits. Therefore I do not believe that there is any point gained by citing these two cases of Rs. 75,000 and Rs. 22,000. So far as the value of the land is concerned, it is very good of the Hon'ble the Law Member to have frankly stated that he does not base his increase of ten times or twenty times on any principle except that of grabbing as much money as possible."

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Clause 8—*cont.*

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*interrupting*):—"That is not quite accurate. What I stated is that it is not possible even with this 10 per cent or 20 per cent increase to approximate its real value."

Mr. T. ARUMAINATHA PILLAI (*continuing*):—"That was another argument of the Hon'ble the Law Member. I wish to ask the Hon'ble the Law Member that when there is any decrease or depreciation in value of land, is he going to allow any sort of depreciation in the ten times or twenty times? It is impossible to do all these things. There is no use of going from one side of the question to another. If we are going to increase at all it must not be by cent per cent. I submit that 50 per cent would be a reasonable amount of increase."

Mr. N. A. V. SOMASUNDARAM PILLAI:—"I beg to support the amendment. No doubt at present there is an anomaly. There is no proportion whatever between the amount of rates fixed and the value of the estate. The estate may be worth some lakhs, but the plaint would give its valuation at some thousands. The position taken by the Government is that they claim title to the lands; that is to say, in zamindari and ryotwari lands the surface of the soil belongs to the zamindar, and all that lies underneath the soil or above it belongs to the Government. Therefore they fix a value with reference to what they consider to be the right possessed by the zamindar or ryot. It is by reason of that notion that the value in difference arises with regard to court fees. Anyhow seeing that the land is valued for purposes of court fees only at a certain proportion of peshkash, there is no reason why the court fee should be raised by cent per cent. I think it would be reasonable to have it raised by 50 per cent, that is from ten times to fifteen times. For these reasons I beg to support the amendment and say that fifteen times would be enough instead of twenty times."

Rao Bahadur A. S. KRISHNA RAO PANTULU:—"I only wish to point out that the argument advanced by the Hon'ble the Law Member would have been more relevant to the question of fixing the value of the land in suits of this description. All that he stated was that in view of the disproportion that now exists in cases of mesne profits, there was cause for making the value approximate to the land as much as possible. Whatever be the reasons that might have been urged for adopting that method it is not now proposed to fix the value of the land as the basis upon which court fee ought to be paid. When that matter has been conceded, it is necessary to see whether there is any justification for increasing the valuation so far as suits of this description are concerned by cent per cent. The Hon'ble the Law Member has been good enough to state that there is no principle at all guiding this. My only justification for putting forward this amendment is this: that as matters stand at present, there is a difference of 5 per cent provided in cases of suits regarding ryotwari lands and in cases of suits in permanently settled estates. The effect of this amendment is going to be that when the valuation was five and ten times formerly, it would be ten and fifteen times according to the new method of calculation. The principle involved in the matter is that we should be somewhat considerate in the rates by which it is proposed to increase the court fees. It is not desirable to increase it all at once by cent per cent. It is desirable that we should limit it only to half that amount so as to make it possible for persons to realise that we are quite

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Clause 8—*cont.*

reasonable and moderate in the enhancement we propose. Already we are all aware there has been some amount of dissatisfaction that there has been an increase of taxation all round in every case. That feeling has been given expression to in various sections of the press. That is a circumstance which ought to be taken into consideration before we make such enhancement as is now proposed. It is only to moderate the enhancement proposed that I move this amendment."

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"I think I was particularly clear in explaining my position. But unfortunately it appears that both my honourable friends Mr. Arumainatham Pillai and Mr. Krishna Rao have chosen to misunderstand me. For instance, a property sued for is valued at Rs. 800 though it yields an income of Rs. 7,000. I should imagine that the property would ordinarily be worth in the market Rs. 150,000 and consequently a person who sues to recover that property should pay an adequate court fee which will have to be on Rs. 1,50,000 instead of Rs. 600 or Rs. 700. I was trying to raise the conventional figure that it may, if possible, approximate the real value. In no event can it really approximate the real value with regard to ryotwari estates and with regard to permanently settled estates. It will take too much time to investigate the value of the land in every case and so a conventional figure was adopted in the original Act and the conventional figure then probably approximated to the real market value, while we know by experience that it does not now in any way represent the real market value. It is time now that this figure is raised. That is the principle which has been adopted. It is only equitable that these persons should pay according to that rate."

The amendment was put to vote and lost.

On the motion of Rao Bahadur A. S. Krishna Rao Pantulu a poll was taken with the following result:—

Ayes.

- | | |
|---|--|
| 1. Diwan Bahadur C. Arunachala Mudaliyar. | 7. Rao Bahadur A. S. Krishna Rao. |
| 2. Rao Sahib S. Ellappa Chettiyar. | 8. Mr. C. V. Venkataramana Ayyangar. |
| 3. Rao Bahadur K. Gopalakrishnaaya. | 9. Rai Bahadur T. M. Narasimhaacharu. |
| 4. Mr. J. Kuppuswami. | 10. Rao Bahadur C. V. S. Narasimha Raju. |
| 5. Mr. N. A. V. Somasundaram Pillai. | 11. Rao Sahib U. Rama Rao. |
| 6. Mr. P. Venkatasubba Rao. | 12. Mr. T. Arumainatha Pillai. |

Noes.

- | | |
|--|---|
| 1. The Hon'ble Sir Lionel Davidson. | 19. Mr. W. Vijayaraghava Mudaliyar. |
| 2. " Sir Charles Todhunter. | 20. Mr. B. Muniswami Nayudu. |
| 3. " Khan Bahadur Muhammad Habib-ul-Jah Sahib Bahadur. | 21. Mr. W. P. A. Saundara Pandia Nadar. |
| 4. " Mr. K. Srinivasa Ayyangar. | 22. Mr. S. Somasundaram Pillai. |
| 5. " Mr. P. Ramarayanangar. | 23. Mr. T. C. Tangavelu Pillai. |
| 6. " Rai Bahadur K. Ventata Reddi Nayudu. | 24. Diwan Bahadur M. Ramachandra Rao Pantulu. |
| 7. Mr. C. P. Ramaswami Ayyar. | 25. Diwan Bahadur M. Krishnan Nayar. |
| 8. Mr. T. E. Moir. | 26. Mr. S. Muttumanicka Achari. |
| 9. Mr. F. J. Richards. | 27. Rao Bahadur Dr. C. B. Rama Rao. |
| 10. Mr. C. W. E. Cotton. | 28. Mr. M. Suryanarayana Pantulu. |
| 11. Mr. R. Littlehailes. | 29. Rao Sahib E. C. Mascarenhas. |
| 12. Mr. E. Periyanaayagam. | 30. Rev. W. Meston. |
| 13. Mr. A. Ramaswami Mudaliyar. | 31. Khan Sahib Muhammad Abdur Rahim Khan Sahib. |
| 14. Mr. R. Appaswami Nayudu. | 32. Mr. Saiyyid Diwan Abdul Razaq Sahib. |
| 15. Rao Bahadur V. Appaswami Vandayar. | 33. Mr. L. C. Guruswami. |
| 16. Sir P. Tyagaraya Chettiyar. | 34. Mr. G. Vandanas. |
| 17. Mr. S. T. Shunmukham Pillai. | 35. Rao Sahib P. Venkatarangayya. |
| 18. Mr. O. Tanikachala Chettiyar. | 36. Sir James Simpson. |

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Clause 8—*cont.*

The amendment was declared lost, 12 having voted *for* and 36 *against*.

Amendments 11 and 12.

The following amendments fell out in consequence :—

Mr. P. SIYA RAO :—

“ 11. *In line 39 for the word ‘ twenty ’ substitute ‘ fifteen ’.*”

Rao Bahadur K. GOPALAKRISHNAYYA :—

“ 12. *In line 39, for the word ‘ twenty ’ substitute the word ‘ fifteen ’.*”

Amendment 13.

Mr. M. SURYANARAYANA PANTULU :—“ Sir, I beg to move—

“ 13. *Omit lines 38 and 39 beginning from “ in ” and ending with “ substituted ” and in their place substitute the following “ in (a) between the words ‘ ten times ’ and the words ‘ the revenue ’ ” add the words “ the difference between,” and at the end of the clause add the words “ and the gross demand of such estate or part of such estate ”.*”

“ Sir, the result of my amendment will be that a person who sues for an estate or part of an estate which is permanently settled will have to pay upon ten times the difference between the peshkash or the revenue that is payable and the gross demand. The Hon'ble the Law Member told us that with regard to immoveable property or more especially with regard to suits of zamindari or proprietary estates, the value for purposes of court fees has absolutely no comparison whatsoever to the actual value of the property. The result is the peshkash which was fixed so early as 1802 is taken as the standard for purposes of calculating the value of the property. Let us take the analogy of an inamdar for instance who pays a quit-rent which is certainly far in excess of the peshkash *pro rata* per acre.

“ But still an inamdar is made to value his suit fifteen times, not of the quit-rent that he pays, but fifteen times the profits arising from the land in the year immediately prior to the suit. It works out worse than the case of the zamindars, whose property is as valuable as the property of the inamdars, and they get off with a mere ten times the peshkash they pay to the Government. The inamdar has to pay not merely ten times or fifteen times the quit-rent but fifteen times the profits arising immediately prior to the suit. I think it is objectionable.

“ There is also another point. Having regard to the possibility of this House suggesting a rate of fees in regard to persons who really deserve help and assistance from this House, I submit that men who can afford to pay should and ought to be made to help the administration, and assist persons who cannot really pay. I submit, therefore, the amendment for the acceptance of the House.”

Rao Bahadur C. V. S. NARASIMHA RAJU :—“ Sir, I have promised my friend to second the amendment. Of course, personally, I do not like very much that private members should go in to assist the Government by their amendments to increase the rates of taxation. Now, there are two kinds of zamindari lands. Certain zamindaris were settled at 90 per cent of the assets at the time of the settlement and others at about half or less than half of the assets. The peshkash really bears no proportion to the real value of the estate in the case of most of the zamindaris. Even the present income

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[Mr. C. V. S. Narasimha Raju]

Clause 8—*cont.*

of the zamindaris bears no proportion to the peshkash. The conventional value has been done away with in the case of inams and the previous year's income is taken into consideration, in fixing the value and the same thing may be done for the zamindari lands also. It will be a far more satisfactory valuation than the valuation laid in the Act as it is."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"Sir, I am in some difficulty regarding this amendment. If somebody assures me that this is going to improve the revenue I will gladly accept it. My own idea is that it will, and I am inclined to accept it. But all the same I want to present this bonus to the zamindars by not accepting it for several reasons. It is stated in the amendment 'the gross demand of such estate or part of such estate.' Will this gross demand include the revenue from pannai, fisheries, forests, and other items? I am not sure. In the jamabandi you take into consideration all these items, but the gross demand may be construed as confined to the rent received by the zamindar. In this case it will give less. Further, there will be difficulties in determining the gross demand. The peshkash is easily ascertainable. In these circumstances I do not propose to say anything further."

Mr. N. A. V. SOMASUNDARAM PILLAI :—"The honourable member seems to be labouring under a misapprehension that the income is not very much above the peshkash payable. It may possibly be that the income from the estate may be Rs. 4,000, while the peshkash payable is only Rs. 1,000. So, if we calculate in the way pointed out by the honourable member, the plaintiff will have to pay more court fee. This will work a very great hardship on the zamindari landlord. In these circumstances I oppose the motion. I will even request the honourable member to withdraw his motion."

Mr. M. SURYANARAYANA PANTULU :—"Sir, I thought that this amendment was one which ought to be acceptable to the Government. But since the Hon'ble the Law Member says that he wants to make this as a bonus to the zamindars, I hope he will be equally just, when the time comes, to others also. I beg leave to withdraw the motion."

The motion was by leave withdrawn.

Amendment 14.

Rao Bahadur K. GOPALAKRISHNAYYA :—"Sir, in view of the result of amendment No. 10, I do not move the following amendment :—

'14. In line 41 for the word "ten" substitute the word "eight."'

The amendment was not moved and was therefore deemed to have been withdrawn.

Amendment 15.

The following motion was deemed to have been withdrawn as the member was not in his seat :—

Mr. P. SIVA RAO :—

'15. In line 41 for the word "ten" substitute "seven and a half."'

Clause 8 was then put and passed and added to the Bill.

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CLAUSE 9.

Amendment 16.

Mr. N. A. V. SOMASUNDARAM PILLAI :—

“16. Omit “ (Omitted) ” and insert the following :—

“ At the end of section 7 (ix) the following paragraph shall be added :—

‘ Provided that if the Court finds that a bona fide dispute as to title is raised, it may at or before the first hearing direct the suit to be valued as a suit for the possession of the mortgaged property ’.”

The above motion was not made and was therefore deemed to have been withdrawn.

CLAUSE 11.

Amendment 17.

Mr. M. SURYANARAYANA PANTULU then moved the following amendment :—

“ 17. In line 27 after the word ‘ court ’ and before the word ‘ shall ’ insert the words ‘ from time to time may ’ and omit the word ‘ shall ’ occurring after the word ‘ court ’ and before the word ‘ fix ’.”

In doing so, he said :—“ Honourable members will find that the first paragraph of clause 11 ends thus : ‘ If the additional fee is not paid within such time as the court shall fix, the claim for the excess shall be dismissed.’ What I want is after the word ‘ court ’ to insert ‘ from time to time may ’ and omit ‘ shall ’ before ‘ fix ’. The sentence will then read thus : ‘ If the additional fee is not paid within such time as the court from time to time may fix, the claim for the excess shall be dismissed.’ The object of moving this amendment is similar to that of the amendment moved by Mr. Tanikachala Chettiyar the other day, so that we may be on the safer side. It is quite possible that the courts of justice might find difficult sometimes to extend the time. It is quite possible for the court to say : ‘ The additional fee is not paid within such time as the court fixed. Such a date having expired it is not possible for me to extend the time any more.’ The object of the amendment is to give the court power to extend the time if it deems fit. I know as a matter of fact the Court is allowed a discretion to grant time for doing a particular thing. It is absolutely within the competence of such courts to exercise discretion in granting adjournment. I move this only to be on the safe side. Therefore I formally make this motion.”

Rao Bahadur C. V. S. NARASIMHA RAJU :—“ I second this amendment. I do not think that the Government will have any objection to this amendment which does not, in any way, affect adversely the taxation proposals. On the other hand it gives the Government an opportunity to get more money. The court may not have power to extend the time ; the amendment only gives the court power to extend time and greater latitude for the plaintiff to deposit the court-fee on the mesne profits. If the amendment is not allowed, the courts may say that they have not got the power to further extend the time. In that way the Government may lose the chance of getting additional money. Of course the other party may be benefited thereby, but the Government will be deprived of its stamp duty.”

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Clause 11—*cont.*

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"I have no objection to accept the amendment. I do not know whether my friend will accept a slight verbal alteration. Because, if the amendment is accepted as it is, the language of the amended clause will be inelegant."

At the suggestion of the Hon'ble the President, Mr. M. Suryanarayana Pantulu withdrew his motion by the leave of the Council to enable the Hon'ble Mr. K. Srinivasa Ayyangar to move his amendment.

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"I formally move the following amendment, Sir :—

'In line 28 *omit* the full stop after the word "dismissed" and *add* the words "unless the court for sufficient cause extends the time for payment."'

The Hon'ble Khan Bahadur MUHAMMAD HABIB-UL-LAH SAHIB Bahadur :—"I second it."

Rai Bahadur T. M. NARASIMHACHARLU :—"I have got one doubt. Sometimes, it so happens the client who brings the money, by some accident, misses the train or there is some other accident by which he comes one day too late. Then he applies for extension of time, but the court does not allow it saying he ought to have applied before the expiry of the period. Very often I have come across with such a construction of this particular clause—"

Mr. C. P. RAMASWAMI AYYAR (*interrupting*) :—"That point has been cleared by previous decisions."

Rai Bahadur T. M. NARASIMHACHARLU (*continuing*) :—"But decisions change. Very often what High Courts have decided the Privy Council has upset. As we are legislating, we may sometimes err on the side of superfluity. It is well to make the point very clear so that the courts may not attempt to change its original meaning."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"It will be merely to make the sentence very elegant. This is the expression used in various Acts. I do not think there is any real difficulty."

Rao Bahadur K. GOPALAKRISHNAYYA :—"The amendment is redundant. The last sentence 'if the additional fee is not paid within such time as the court shall fix, etc.' does not mean that the court has no power to extend the time. Ordinarily, the sentence would be construed only as meaning that the court still has power to extend the time. The purpose of the Act is only to limit the time. It does not mean that the time should be limited only to the first occasion. No proviso would therefore be necessary in this case. Moreover, according to section 151 of the Civil Procedure Code the court has inherent powers to extend the time limit. There is also an express provision for extension of time. Therefore, no express proviso is necessary."

The motion—"In clause 11, line 28, omit the full stop after the word 'dismissed' and add the words 'unless the court for sufficient cause extends the time for payment'"—was put and carried.

Clause 11 as amended was then passed and added to the Bill.

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CLAUSE 12.

Amendment 18.

Rao Bahadur K. GOPALAKRISHNAYYA :—" I beg to move the following amendment :—

' 18. Omit the whole clause.'

" The amendment proposed in clause 12 relates to section 18 of the principal Act. Section 18 reads as follows :—" When the first or only examination of a person who complains of the offence of wrongful confinements, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the court thinks fit to remit such payment.

" As it is, the Act provides for payment of eight annas. Now the proposed amendment seeks to provide one rupee instead of eight annas. In non-cognizable cases for which written complaints are generally essential such an enhancement from eight annas to one rupee would be a hardship in cases where poor people are involved. Therefore I move that this clause 12 may be deleted."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" With regard to the raising of these small amounts, we have followed the Bills which have been introduced in other provinces. I think that they should pay at least this fee. It is only applicable in cases where the complaint is for wrongful confinement or for wrongful restraint or any offence other than an offence for which police officers may arrest without a warrant, and they have not already presented a petition. Consistently with this, we have also raised the fee to one rupee in the second schedule with regard to complaints of this sort."

Rao Bahadur K. GOPALAKRISHNAYYA :—" I do not think there is any possible explanation for this increase. I still hold that this clause 12 should be deleted."

The Hon'ble Sir LIONEL DAVIDSON :—" As the honourable member presses this amendment, I should like to say a word or two based on the experience of a good many years during which I had to deal with magisterial cases. That experience showed that summons cases like these are frequently of a very frivolous description indeed, and it is certainly desirable to put some check on frivolous complaints. Such a check is furnished by the requirement that an eight-anna stamp shall be affixed to the complaint. And so far as the case of the poor man is concerned, there need be no hardship in the matter, because the final words of section 18 of the Court Fees Act give the court power to remit such payments if it thinks fit. The present proposal is merely to increase the stamp duty on those complaints from eight annas to one rupee. Since, as I have stated, the final words of section 18 give the court power to make remissions, I really do not see any good ground for objection or alteration."

The amendment was put and lost.

Clause 12 was then passed and added to the Bill.

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SCHEDULE I, ARTICLE 1.

Amendment 19.

Rao Bahadur C. V. S. NARASIMHA RAJU :—“ I beg to move the following amendment :—

‘ 19. Add the following as proviso :—

“ *Provided that half the amount of the fee paid under the provisions of this clause shall be refunded when a suit, or a set-off or counter-claim is decreed ex parte or compromised before evidence has been adduced.* ”

“ The effect of it is, in the case of suits decreed *ex parte* or suits compromised before evidence is let in, to refund half the court fees paid in the suit. This does involve a loss of revenue, but we shall have to consider whether it is a just principle or not that has to be given effect to. In a suit which is decreed *ex parte* the time of the court will not be occupied, and it is reasonable that the whole of the court fees shall not be retained, but half of it should be refunded. One of the reasons that induced me to send in an amendment to this effect is that in most cases the defendant does not dispute the claim but on the other hand is not able to pay his creditor and the creditor finds it necessary to arm himself with a decree to proceed against the debtor to recover his money. The debtor ultimately will have to pay not only the amount due but the cost in the shape of court fees as well. Of course the number of suits decreed *ex parte* is large compared with other suits. Out of 500,000 of suits filed in the year 1920 the suits decreed *ex parte* is 186,000 and odd. I do admit that it is a good number, but this House has to consider whether it is the right principle or not when the time of the court is not occupied and ultimately when the whole amount has to be borne by the poor debtor himself, who is unable to pay even the principal amount and drives the creditor to go to court and arm himself with a decree to proceed against him.

“ Regarding suits for compromise, the number is very small. The suits that are compromised are only 6,245 out of 500,000 instituted, and that some of these 6,245 may be suits that were compromised after the trial had begun. I want only to exclude suits which were compromised before the trial had begun. The reason is the time of the court is not occupied. This is the best time to debate this principle, because we have increased the rate of court fees and if relief is not given at this stage, I think the Government may find it more difficult to give relief in those just cases hereafter. In my opinion, there will be a sort of good inducement for suits being compromised if such a refund of court fees is given. In a good number of cases, compromise, we know as a matter of fact, is more desirable than decision of the court. With these few words I commend this amendment for the acceptance of the House.”

Mr. M. SURYANARAYANA PANTULU :—“ Mr. President, I have great pleasure in seconding this resolution and, in doing so, I would
3-45 p.m. urge for the consideration of this Council one more fact in addition to what has already been submitted by the Hon'ble Mr. C. V. S. Narasimha Raju and that is that in *ex parte* suits while so far as the party is concerned it is only half fee that is taxed. I do not see any reason why the Government also should not forego half of the court fee which it has received in respect of that suit. Similarly in regard to a suit which has been compromised half may be refunded on the above ground.”

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Schedule I, Article 1—*cont.*

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“Mr. President, there is some difficulty in accepting this amendment as it is. I do not know whether the words ‘before evidence has been adduced’ apply to *ex parte* decrees also or whether it governs only compromise—”

Rao Bahadur C. V. S. NARASIMHA RAJU (*interrupting*) :—“It is not my intention that it should govern *ex parte* decrees.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*continuing*) :—“Now, Sir, at once the question arises whether there is any justification for a refund of half fee when the suit is decreed *ex parte*. I will deal with the question of compromise separately. In suits *ex parte*, the court ought to be very vigilant before it passes the decree. And then, supposing for instance the decree *ex parte* is set aside, there is no provision for its refund. Under these circumstances it is impossible for me to accept the provision as regards the decrees *ex parte*. I am willing to go as far as legislation has yet gone, i.e., what is found in section 73 of the Presidency Small Cause Court Act. If the suit is settled out of court, before the hearing, then one-half of the fee is refunded, and there is no chance of the matter coming up to court for decision of the issues thereafter. If that was all, and if a proper amendment had been proposed, I would have accepted the amendment.

“I do not think this is the proper place to provide for it. It ought to be really done by a substantive section and not as a proviso to this clause here, more especially when you see that clause (1) excludes all cases, and it is in Small Cause cases that it is desirable to give this indulgence. This amendment, as it is, is defective in several particulars and it is impossible to accept it.”

Rai Bahadur T. M. NARASIMHACHARLU :—“I feel, Sir, certain difficulty in the amendment proposed and in the suggestion made by the Hon'ble the Law Member. The difficulty that I feel with reference to the amendment is this. It is stated here ‘when a suit or a set-off or a counter-claim is decreed *ex parte*,’ etc. I find a little difficulty in understanding the meaning of a ‘set-off’ being decreed *ex parte* or ‘counter-claim’ being decreed *ex parte* or ‘set-off’ or ‘counter-claim’ coming after the institution of the suit by the plaintiff. Both parties are there, one pleads a ‘set-off’ to the plaintiff’s claim. I find a little difficulty also to understand what is meant by a set-off or a counter-claim being decreed *ex parte*. The difficulty that I feel with reference to the suggestion made by the Hon'ble the Law Member is this : he says these things are settled out of court before the first hearing. A set-off comes in only after the first hearing by a written statement and counter-claim also comes in after the first hearing. Therefore, I fail to see how the suggestion can hold good with reference to a set-off.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*interrupting*) :—“I may say at once, Sir, that I did not mention that as a perfect amendment. If at all it is agreed to, it ought to be done by a separate section.”

The Hon'ble the PRESIDENT :—“In any case, I must draw the attention of the House to the fact that the motion before it is that of the honourable member Mr. Narasimha Raju, not any casual suggestion thereto made by the Hon'ble the Law Member.”

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Schedule I, Article 1—*cont.*

Rai Bahadur T. M. NARASIMHACHARLU (*continuing*):—"Therefore, if the learned mover of this motion will find his way to make that point clear, I think, Sir, there will be no difficulty at all in supporting this amendment. There is no use in putting forward amendments which will give rise to difficulties in the actual application of them when the courts have to apply them and give relief. Therefore I submit that it is better that thing is well thought out and clearly enacted instead of giving rise to difficulties later on."

Mr. T. C. SRINIVASA AYYANGAR:—"Sir, the Government should view the proposals contained in this amendment with generosity; you have noticed some amendments put forward from the non-official benches with a view to enhance court fees in cases where a considerable time of the court is taken up in trials and in hearing arguments. The present amendment is for reducing the court fee. It will, in effect, have operation only in cases of money suits, particularly in Small Causes. It will be quite familiar to many, that in Small Cause courts 70 to 100 suits are ordinarily posted to a day and more than three-fourths of them are disposed of in a single day, whereas a small suit for injunction involving water rights will keep the time of the court engaged for several days and a considerable time will be required by the Judge to hear the arguments and consider and write his judgment. Therefore, the justice of this amendment will be patent. The Law Member thought that there was difficulty between the two classes of cases which are mentioned in the amendment, i.e., *ex parte* decrees and cases of compromise before evidence had been adduced. I do not see how the case of the *ex parte* decrees will create difficulties. The only difficulty which he mentioned was, that if there was an *ex parte* decree and the decree-holder got refund of the half fees, and if the defendant came afterwards and wanted to set aside the decree, there would be difficulty in getting the other half fee. Certainly there are provisions both in the Provincial Small Cause Courts Act and also the Civil Procedure Code that the order reopening the decree may put conditions upon the applicant, the defendant, who wants to reopen the case; he may be called upon to give security for the court fees. The plaintiff when he appears to contest the petition or to proceed with the case, can he be called on to pay the other half fee? In the interests of justice all this can be done, and I do not see any difficulty at all anywhere. Is there not difficulty in bringing forward this amending Bill for the purpose of altering the present law? There are about 70 Small Cause suits ordinarily disposed of. I know of a certain judge who used to hear and dispose of even larger number of cases on account of the abundance of knowledge of local conditions he possessed to the great satisfaction of parties. I fail to see why this measure of relief cannot be given in money suits. I understand that in Mysore they refund half the court fees where decrees are given *ex parte*. I only heard this and I state it subject to correction."

Mr. O. TANIKACHALA CHETTIYAR:—"I beg to oppose this amendment. I am sorry all this discussion has ignored the end in view as set out in the Statement of Objects and Reasons of the Bill, i.e., to meet the increased cost of administration. No doubt we have, in entering upon a consideration of the principles of the Court Fees Act, to consider questions of equality and equity. But we are amending the Act with a view to provide additional revenue.

[Mr. O. Tanikachala Chettiyar] [13th March 1922]

Schedule I, Article 1—*cont.*

Would we be justified in cutting down the already existing provisions so as to take away with the left hand what we profess to have given with the right hand? It is only on that ground that I say that we should not be taking away revenue that we are already getting on the pretence of making the taxation equitable."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" Sir, I feel my honourable friend Mr. Tanikachala Chettiyar has either not noticed or not heard what the Hon'ble Mr. Srinivasa Ayyangar himself pointed out, viz., that there is a provision in the Small Cause Courts Act applying to Madras and that this provision—"

Mr. O. TANIKACHALA CHETTIYAR (*interrupting*) :—" My point is that this was a revenue producing act, however much you may be justified in the case of the Small Cause Court or the original side of the High Court. This is not the place for it. The result of such an amendment would be to cut down the revenue."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU (*continuing*) :—" My honourable friend seems to object even to bringing the new law in conformity with the procedure in Madras. If the raising of revenue means that everybody outside Madras should pay double the amount of court fees, and if that is my friend's idea of equality or equity in the treatment of all litigants, I think it is somewhat ununderstandable. All that is attempted in the present case is to put the litigant in the mufassal in exactly the same position as his fellow litigant in Madras. So far as concerns suits relating to compromise, if my honourable friend concedes the justice of this proposal, I am not able to appreciate his objection when he says that it is a revenue question and that it does not matter whether litigants in the mufassal pay double of what is paid elsewhere.

" Then as regards suits compromised or decreed *ex parte*, undoubtedly there is some difficulty. I must endorse the statement made by my friend, Mr. Srinivasa Ayyangar, that 100 suits are disposed of in one day. This proposal of refunding a portion of the court fees in *ex parte* decrees has been under consideration for a good number of years, and I think this particular opportunity should be taken to relieve these litigants in the circumstances mentioned in this amendment."

Mr. C. P. RAMASWAMI AYYAR (*Advocate-General*) :—" I am afraid there has been some confusion created with regard to the practice in the Presidency Small Cause Court. In the Presidency Small Cause Courts Act the only provision for the refund of any amount is when the suit or the proceeding is settled by a compromise of parties before hearing and there is no question of any such refund in *ex parte* cases.

" Another observation fell from a member of the House with regard to the terms on which parties might be placed if an *ex parte* decree was set aside. At all events I have great difficulty in reconciling that statement with the actual provisions of the Civil Procedure Code. It merely says that as between party and party, one party may be put on terms as to costs and otherwise before an *ex parte* decree is set aside. I do not think that under that provision it would be possible to make the plaintiff pay excess court fees."

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Schedule I, Article 1—*cont.*

Mr. N. A. V. SOMASUNDARAM PILLAI :—“Mr. President, I heartily support the principle embodied in this amendment. Such a provision for the refund of court fee is very necessary in the case of persons who honestly admit the plaint allegations or allow the suit to be decided *ex parte* against them or enter into agreement with the parties as to plaint claim. In fact the introduction of such a provision will largely give an inducement to the parties to come and state the truth or admit the plaint before the court. Otherwise as a matter of fact it goes without saying that there would be no gain at all by the claim not being contested. They rather prefer to take a chance of contesting the suit and drag it on to a great length of time. So I think the introduction of such a principle would be very desirable and necessary. I am not able to appreciate the argument of my honourable friend Mr. Tanikachala Chettiyar when he said that this being a Bill introduced with a view to raise revenue it is altogether out of place to have any such consideration. Certainly that is not the principle which underlies the Bill as placed before the Council nor is that the principle on which the members should consider it in amending the provisions of the Bill. No doubt one object is to remedy the present financial difficulties. The other object is that the Act is such an old one passed over fifty years ago and therefore the provisions require some amendment. The mere fact that this Bill has been brought forward now for the purpose of raising revenue would not prevent this Council from considering it and saying whether any principle is reasonable or not.”

Mr. O. TANIKACHALA CHETTIYAR (*interrupting*) :—“I did not say that the principle should not be considered, Sir.”

Mr. N. A. V. SOMASUNDARAM PILLAI (*continuing*) :—“There is a provision in section 73 of the Provincial Small Cause Courts Act to the effect that whenever any such suit or proceeding is settled by agreement of the parties before hearing, half the amount of all fees paid up to the hearing ought to be repaid to the parties. But in regard to the amendment as it now stands, there is some difficulty. As it is, the amendment says when a suit or set-off or counter-claim is decreed *ex parte* or compromised, etc., as pointed out by the honourable member for Vizagapatam, but the set-off or counter-claim cannot be decreed *ex parte*. It would be much better if we say ‘if a suit is decreed *ex parte* or such a suit or counter-claim or set-off is admitted by the other side, or is settled by agreement between the parties.’ So far as compromises before evidence is adduced are concerned, it would lead to unnecessary complication to decide as to when the compromise was effected, whether it was effected before or after the settlement of issues or filing of the statement, or after the suit has undergone a number of adjournments during a period of one year or even two years or more. If I have the permission of the Hon’ble the President I would like to move an amendment to this effect: ‘provided that half the amount of fee paid under the provisions of this claim shall be refunded when a suit is decreed *ex parte* or when a suit or set-off or counter-claim is admitted by the opposite party or settled by agreement of parties,’ omitting the words ‘or compromised before evidence has been adduced.’ If that is permitted, I beg to move that amendment.”

The Hon’ble the PRESIDENT :—“Does any honourable member object to the moving of the amendment?”

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Schedule I, Article 1—*cont.*

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"I do object, Sir. After all, it is the case of a Bill. It is not even a resolution. If any member wants to add one more to the amendments already tabled, the amendment should be clear and intelligible. I had no notice of it."

The Hon'ble the PRESIDENT :—"I fear I have to uphold the objection. We are dealing with this Bill under considerable difficulty. Does the honourable member Mr. Narasimha Raju wish to reply?"

Rao Bahadur C. V. S. NARASIMHA RAJU :—"Mr. President, as I understand the Hon'ble the Law Member, I think he is for making a concession in favour of the litigant public in the case of suits compromised at an early stage. I do see the difficulty of introducing this provision at this place. But if the honourable member gives an assurance that later on when it is convenient he will introduce a Bill giving effect to these principles, I have no objection to withdraw my motion."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"I am sorry, Sir, I cannot give any such assurance at all, but what I do propose to do is to examine the whole Court Fees Act with a view to make it clearer and if possible to make it more logical."

The amendment was put to the House and lost.

Amendment 20.

The Hon'ble the President then called on Mr. N. A. V. Somasundaram Pillai to move the next amendment which stood in his name.

Rao Bahadur T. A. RAMALINGA CHETTIYAR :—"I rise to a point of order, Sir. This is an amendment which should come at the end of the article 1. There are other amendments which relate to other items in the article, intermediary items, printed down below in the agenda which will have to be disposed of before this amendment is taken up."

The Hon'ble the PRESIDENT :—"I think it is all right. There are three columns to schedule I which we are now dealing with. The amendments relate to items in all the three columns. No. 1 in the first column is now under disposal. This amendment proposes to add certain words at the end of No. 1 in the first column of the schedule, which is —

'Plaint or written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any civil or revenue court except those mentioned in section 3 and in article 2 of this schedule.'

"Presumably Mr. Somasundaram Pillai wants to put his proviso after that item No. 1."

Mr. T. ARUMAINATHA PILLAI :—"May I just point out, Sir, with your permission, another circumstance so far as this amendment is concerned. If you refer to the schedule I to the present Court Fees Act, you will find the corresponding clause only at the end of the second column, i.e., 'Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.' So what my friend Mr. Ramalinga Chettiyar wants is that this amendment, whether it is to be passed or not, should come at the end. Therefore I would ask, Sir, with great respect, whether this amendment proposed to be moved by Mr. Somasundaram Pillai could not be moved at the end."

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Schedule I, Article 1—*cont.*

The Hon'ble the PRESIDENT:—"The only remark I have to make is that the amendment has not been tabled by me. It has been tabled by the honourable member Mr. Somasundaram Pillai (laughter), and it is for him to move the amendment if he wishes to do so. These amendments relating to column 1 must be disposed of before I take up the other amendments."

MR. N. A. V. SOMASUNDARAM PILLAI:—"Mr. President, I beg to move the following amendment:—

'20. *Add the following at the end:—"Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be five thousand rupees."*

"According to the present Act, the court fee is fixed at varying rates from As. 6 as mentioned in columns 3 of schedule 1, and at the end there is a provision made to this effect: provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees. In the present Bill this provision of maximum court fee payable is taken away and it is left to be calculated as per the table given in the schedule. You find there that the court fee payable on a valuation of between Rs. 48,000 and Rs. 50,000 is Rs. 1,762-7-0, and below that we find the provision: 'When the amount or value of the subject matter exceeds Rs. 50,000 for every Rs. 5,000 or part thereof in excess of Rs. 50,000—thirty rupees.' At the rate given in the schedule in the present Bill, the court fee payable on a valuation of Rs. 2,40,000 or so would come to Rs. 3,000. For a suit worth about Rs. 6,00,000 the court fee payable would be Rs. 5,000. When the value of the suit is over Rs. 6,00,000, then the court fee would also be increasing at the rate of Rs. 30 for every Rs. 5,000 without any limit whatever. Therefore what I beg to propose is that there should be a maximum limit of Rs. 5,000 instead of the present maximum of Rs. 3,000. Seeing that we have been raising the rates of court fees by 50 per cent or 25 per cent, I thought that Rs. 5,000 would be a reasonable amount which can be fixed as the maximum. With these words, I move my amendment and leave it in the hands of the Council."

MR. P. VENKATASUBBA RAO seconded the motion.

The Hon'ble MR. K. SRINIVASA AYYANGAR:—"Mr. President, there is really no justification whatever to fix any such maximum. We are following the precedent of Bihar and in Bihar they have increased the court fees far beyond what we have done. In addition to that, I want to point out to the House one other thing. If you take the law as it at present stands, the maximum of Rs. 3,000 is attained with a suit of the value of Rs. 4,10,000. If my proposal with regard to the raising of the court fees is accepted, the maximum which is suggested in this amendment will be attained in the case of a suit of the value of about five lakhs of rupees. The total number of suits whose value is above Rs. 10,000 out of nearly 450,000 is about 571. If you take suits of the value of 4 or 5 lakhs, there will scarcely be a suit in a year. I think these suitors should pay an adequate court fee. Supposing the value of the suit is about 4 lakhs, what do you think is the fee, which ordinarily a vakil would take? It would be far more than the fee which the court fixes. I see nothing harsh in that, nor am I able to see why an adequate court fee for such heavy suits which are not very common should not be paid. As I said, there can scarcely be any doubt that such kinds of

[Mr. K. Srinivasa Ayyangar] [13th March 1922]

Schedule 1, Article 1—*cont.*

suits would be only one or two at the most in a year, and in such exceptional cases an exceptional fee is required to be levied and it ought to be paid. Therefore I object to limiting the maximum to Rs. 5,000."

Mr. T. C. SRINIVASA AYYANGAR:—"I rise to support whole-heartedly the amendment moved by my friend Mr. Somasundaram

4-15 p.m.

Pillai. The Hon'ble the Law Member in supporting his proposal and opposing the amendment stated that the number of suits of large pecuniary value is few and there is no reason whatever for limiting and fixing any particular amount as a maximum court fee that was payable. And he supported his arguments by drawing a comparison or contrast, whatever it is, between the vakil's fee and the court fee. The comparison or contrast has no value. While the law has limited the maximum vakil's fee to a thousand rupees, the law has also taken care to fix the maximum court fee at Rs. 3,000. What can be reasonably wanted is that the maximum court fee should now be placed at a higher figure with a view to the financial needs of the province, at a somewhat higher figure than Rs. 3,000.

"Coming from a district which generally supplies a comparatively large number of suits of higher pecuniary value and knowing most of that class of litigants, I can certainly speak on the great difficulty to which many of the suitors would be put in coming to the court to file suits if what is proposed in the Bill is adopted. The recent trade depression has caused a great number of difficulties in their foreign trade and most of the suits now in the Ramnad district are the off-spring of the depression in Burma, the Federated Malay States, in the Straits Settlements and in the Dutch East Indies and in other places. Especially the depression in the East can be noticed in the civil judicial statistics of the Ramnad district; and it would be absolutely unfair to such suitors that have got to come to the court having lost heavily and being unable to recover their dues from their debtors who would under more prosperous conditions have paid up, if they are called upon to pay an indefinitely increasing sum of court fee calculated upon a higher rate. And I think Sir, it will be essential in the interests of the people that there must be a limit to the court fee at some stage. You will be pleased to see that it is not merely in the court fees we are adding to the burden of the litigants. The higher rate of witness batta, a higher stamp duty even on the vakalat and a host of other things add to it and I believe it will be within the knowledge of the Hon'ble the Law Member, that in the matter of litigation all these things will have to be taken into consideration. Therefore Mr. Somasundaram Pillai's proposal to limit the maximum court fee at Rs. 5,000 will not unduly trench upon the possibilities of the revenue under this head to the Government. But the amendment enhances the present maximum and fixes the maximum at the reasonably higher figure of Rs. 5,000."

Mr. T. ARUMAINATHA PILLAI:—"In this case at least I am willing to support the Hon'ble the Law Member and to oppose the amendment proposed. When a man is coming to the Court with a suit of the valuation of 5 lakhs, and is fighting for such a large amount, I do not see any reason why he should not be paying a proportionate court fee. If it is a case concerning a poor man, I can very well sympathise. But when such a rich man is concerned, he ought to be able to pay a due proportion of costs and therefore I do not believe there is any substance in the amendment. In support, therefore of the Law Member, I strongly oppose the amendment."

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Schedule I, Article 1—*cont.*

Diwan Bahadur M. RAMACHANDRA RAO PANTULU:—"I am afraid I have to oppose my honourable friend's amendment. In any case, there is some truth in the statement that lawyers are the most conservative people. They have been accustomed to regard Rs. 3,000 as the maximum which can be levied as court fees in suits and having been accustomed to that way of thinking from a long time, that is ever since they began to practice in the courts, they have begun to regard it as the *ultima thule* of levy. And I believe it was this unconscious sentiment that induced my friends to support this motion. We can very well understand amendments proposed to safeguard the interests of the poor. But I certainly do not subscribe to this tenderness towards the richer litigants. Very few persons come up to the courts with suits requiring more than Rs. 5,000 as court fees. In the case of such rich persons as have dealings in Rs. 5 lakhs and more, there is absolutely no reason why this Council should be particularly tender. In their case I do not think there would be a hardship. If the amendment is accepted the effect would be practically to deprive the State of its legitimate dues; I must therefore oppose the amendment.

"My friend, Mr. Arumainatham Pillai, thought this was a very unreasonable amendment. He has the good fortune of living in Madras and dealing with litigants here. I am aware that litigants in the city are let off cheap in the matter of court fees. This is probably why my friend was not able to appreciate a different set of circumstances, not knowing the actual difficulties of litigants in the mufassal in suits for partition. Just to give my friend an example, my friend, Mr. C. P. Ramaswami Ayyar, has just now a suit in one of the mufassal courts where the value of the suit has been placed at Rs 50,00,000. Now I ask my friends to realise the difficulties of litigants—of the richer class—in the matter of court fees. Besides, my friends should realize the effect of, such a costly court fee especially when they have to pay under the terms of the Stamp Act, in the case of a document for partition, a further court fee on the decree, which itself would come to an enormous sum. My reason for supporting this amendment is that we are already proceeding by this Bill to double the existing duties. The Rs. 3,000 has been raised to Rs 5,000, a perfectly reasonable amount. But I think that even the richer litigants ought to have some kind of relief. I only wish that we may not make litigation prohibitively costly even for these richer men. The fees in a partition suit are very high; the lawyers are costly notwithstanding their conservatism. I think that Rs. 5,000 is a reasonable sum for the cost of the officers who have to try the suits. There must be some limit somewhere; and simply because we want money we should not go and say 'pay the fee according to scale'. There must be a reasonable amount and I therefore oppose the amendment."

Mr. S. SOMASUNDARAM PILLAI:—"I am sorry to say that my friend, Mr. T. C. Srinivasa Ayyangar, has given instance of chetties who go to foreign countries and come back with large amounts. Such people should be compelled to pay a higher court fee. Mr. Ramachandra Rao gives the case of a partition suit. The object of this measure is to check that tendency to quarrel and come to a court for settling the partition between the brothers. And if the brothers still come to the court, I think, it is necessary to compel them to pay higher court fee. Of course the poor

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deserve our sympathy ; but why should we support the rich who have accumulated such a large amount of money? They must be prepared to pay a large amount of money to the Government by means of court fee."

Mr. C. V. VENKATARAMANA AYYANGAR :—"Sir, I want also to oppose the amendment. Much has been said about the litigation fee corresponding with the work that has to be done by courts. I do not think there is any question of principle involved in this. But if it is a principle of more money for more work, then the suits by these zamindars which deal with big estates whose history must be some centuries old should take a number of months and years for being disposed of. Then would come the question of the vakils, conservative or otherwise. But, I do not know if my friend Mr. Krishnan Nayar referred to vakils old or new. Whatever it is, I do not think the vakils make any distinction as to the amounts and place any limit on the fee they get. I do not want to go to personalities ; I would only say that all the three leading gentlemen that have been mentioned certainly never placed any limit to the fees they got and they would get hereafter. I am therefore for taxing the rich man. It happens only in one or two cases in every year. And as there should be more time required for the consideration of the suit, there should be more money that should be spent by the Government in the establishments and other things. I therefore do not think that there is anything wrong at all in asking the rich man who wishes to have the luxury of a litigation to pay a fee corresponding to the heaviness of the suit and their pocket. It strongly support the provision in the Bill as it is and oppose the amendment."

Rao Bahadur K. GOPALAKRISHNAYYA :—"I also rise to oppose the amendment. Some honourable members have referred to the principle involved in the amendment. I think it is not sound, but on the other hand, the principle in the original Bill, to raise the court fee according to the value of the suit is sound. My honourable friend Mr. Ramachandra Rao has referred to partition suits. Of course, partition suits are based on a different footing altogether. It may be that some stamp duty will have to be paid at the time of the decree, because one or the other of the members of the joint family would require title to his share of the property. That is a different matter altogether. As a matter of fact in partition suits generally even an ordinary person would be required to pay an additional stamp duty at the time of the passing of the decree. It is curious to say that, because a rich man has to bear a stamp duty at the time of the decree in partition suits, he should not be required to pay this court fee beyond Rs. 5,000. I think, Sir, it is bad in principle. Further, such cases may be very few. As the Hon'ble the Law Member has said, there may be one or two cases of this nature in ten or twenty years, and it is not right, I think, that the State should be deprived of this additional court fee which it would otherwise get. After all, the increase as proposed in another amendment is only Rs. 30 for any sum in excess of Rs. 5,000, and of course it is the intention of the Bill to adopt the same principle for all, and if in consequence a rich man is affected we cannot help such a state of affairs. He cannot have a proportionately greater advantage than a poor suitor. For this reason, I oppose the amendment."

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Schedule I, Article 1—*cont.*

The Hon'ble Rai Bahadur K. Venkata Reddi Nayudu moved that the question might be put.

The motion for the closure was put and carried.

The amendment was then put to the House and lost.

Amendment 21.

The following amendment was not moved, the honourable member Mr. P. Siva Rao, against whose name it stood, not being in his seat, and it was therefore deemed to have been withdrawn :—

“ 21. *Add the following as proviso :—*

‘ Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees. ’”

The Hon'ble the PRESIDENT :—“ The honourable member Mr. Gopalakrishnayya has a number of proposals. Does he propose to move every one of them ? Of course he is entitled to do so.”

Rao Bahadur K. GOPALAKRISHNAYYA :—“ If you will please allow me, Sir, to move all the amendments together, I have no objection.”

The Hon'ble the PRESIDENT :—“ I do not know if they are all connected changes. In fairness to the House I must put definite issues before it. I think the honourable member had better take the first one and move it so that the House may see how the matter stands.”

Amendment 22 (i).

Rao Bahadur K. GOPALAKRISHNAYYA :—“ I beg to move the following amendment :—

‘ 22. (i) *In column 1 omit the last words “ and in article 2 of this schedule.”*’

“ Sir, I think honourable members need not be alarmed at the number of amendments which I have tabled under amendment No. 22, because the principle involved in all these amendments is one and the same.

“ Now, the original Bill provides for two articles Nos. 1 and 2, corresponding to the tables given at the end of the schedule of *ad valorem* fees, the two tables provided in accordance with these two articles Nos. 1 and 2. Even with regard to the order of the amendments, I feel a little difficulty, Sir, because unless the other amendments are considered, the House will not be in a position to correctly determine the amendment which is tabled as No. (i) under amendment No 22. Because, my view is this : that articles 1 and 2 should be combined together ; there should be only one article. Even the original Act provides for one article. Now, the Bill seeks to provide for another article No. 2 for the purpose of suits of a small cause nature. But the principle which I wish to enunciate by my amendment is that suits up to Rs. 500 should be treated as usual under one category and should bear the same court fee as is provided for in the original Act and suits whose value exceeds Rs. 500 but does not exceed Rs. 1,000 should bear a separate rate of court fee, say 10 per cent. That is the principle involved in the various amendments which I have proposed under amendment No. 22. Even for suits whose value exceeds Rs. 1,000, I have provided for a gradation or a progressive scale, so that all these various suits of a value up to Rs. 1,000 may

[Mr. K. Gopalakrishnayya]

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Schedule I, Article 1—*cont.*

be treated as suits of small cause nature and should bear only the court fee which is provided for in the Bill up to Rs. 500 and those above Rs. 500 should pay a different scale of court fee slightly higher at 1 rupee for every 10 rupees. If we take into consideration all these suits and treat them as one matter, then, Sir, there would be no necessity for these words at the end of article 1 in column 1 'and in article 2 of this schedule'; because in other amendments I propose to delete article 2 altogether without any injury being done to the principle involved in the Bill. I treat suits of a small cause nature like other suits up to Rs. 1,000 which are provided for in the Bill, so that the principle of the Bill is not jeopardised by these amendments on account of the progressive or gradation scale which is now sought to be provided for in my amendments. So the words at the end of article 1, column 1, 'and in article 2 of this schedule' are unnecessary, and therefore I move that those words may be deleted."

Rao Bahadur A. S. Krishna Rao Pantulu seconded the motion.

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"Mr. President, the scheme of the amendments proposed by me to the original Act is this. I wanted to keep the original rate of taxation in so far as suits are tried as small cause suits. If they are tried as regular suits with a right of appeal, I do not see any reason why they should be exempted from paying the higher fee whatever may be their value. It is absolutely necessary to raise the *ad valorem* fee or the rate of the *ad valorem* fee, if you want to make the courts pay their way. Therefore it is, Sir, that there has been an increase of fees in smaller suits by about 25 per cent, and in the higher classes of suits or more valuable suits, of about 50 per cent on the present value. It is for the purpose of differentiating between ordinary suits and suits tried as small cause suits that this provision in article 2 of the schedule is entered. If they are omitted all the suits will be charged in exactly the same way whether they are tried as small cause suits or as ordinary suits, and the proposal of my honourable friend is to tax all suits up to Rs. 500 in exactly the same way. Now, Rs. 500 is the maximum limit of small cause jurisdiction. So far as munsifs' courts are concerned the maximum of small cause jurisdiction is Rs. 200, and above that you will have to try any suit as a regular suit with a right of appeal. They should not all pay the same fee."

Mr. N. A. V. SOMASUNDARAM PILLAI:—"It is not possible to give an opinion with regard to this proposal, that is amendment No. 22 (i) to delete the words 'and in article 2 of this schedule'. Because if this amendment is carried and the other amendments lost, we will be left in a worse position. It is therefore reasonable to consider the other amendments before we take up this amendment in column 1. Now, under the present arrangement in the Bill as now provided for and as approved by the Select Committee, so far as suits to be tried by small cause courts which have got jurisdiction up to Rs. 500 are concerned, the present court fee ought to remain. But with regard to other suits the court fee has to be raised. With a view to that effect this phrase 'in article 2 of this schedule' is added to article 1. If you take away this clause we might be left in a difficulty. Therefore, unless the Council knows as to what is to become of the court fee payable in the small cause suits and other suits, it will not be proper to have these words omitted altogether. This is what I wish to submit for the consideration of the House."

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Schedule I, Article 1—*cont.*

Rao Bahadur A. S. KRISHNA RAO PANTULU :—"Sir, I also agree with my honourable friend, Mr. Somasundaram Pillai, in thinking that we ought to consider this amendment after considering the specific proposals contained in subsequent amendments. On the present question, if we do not succeed in effecting the reduction as proposed in this or in subsequent amendments we will be in a worse position. It will be noticed that amendments 22 (ii) to (xiii) and 23 to 26 are all calculated to effect a reduction in the fees prescribed in the present Bill to a certain extent. In two cases, in 24 and 25, it will be found that the amendments are calculated to maintain the *status quo* so far as suits up to Rs. 5,000 are concerned. The amendment of which I have given notice, viz., amendment No. 23, is calculated to retain the scale up to Rs. 1,000. And the effect of the present amendments is that we remain *status quo* up to Rs. 500 only with some further modifications. It is impossible for us to come to a decision as to the effect of this amendment at this stage. Therefore, Sir, I wish to move that the consideration of this matter be taken up after amendments 22 (ii) to (xiii), and 23 to 26 are disposed of. These are all practically on the same lines and are intended to effect a reduction in the scale of fees. I therefore beg to move formally, Sir, that 'the further consideration of item 22 (i) be adjourned till after the disposal of items 22 (ii) to (xiii), and 23 to 26 on the agenda.'"

Mr. T. C. SRINIVASA AYYANGAR :—"I second the motion, Sir, for annexure 1 to Schedule 1 gives the *ad valorem* rate for courts which exercise small cause jurisdiction, at page 8 of the Bill that deals with small causes. These amendments are to lie over, after the discussion relating to small causes is over, till after the amendments dealing with annexure I to schedule 1 are disposed of, viz., amendments 41, 42 and 43."

The Hon'ble the PRESIDENT :—"The honourable member who has seconded the proposal has referred to amendments different from those referred to by the honourable mover who has asked for the adjournment."

Mr. T. C. SRINIVASA AYYANGAR :—"It is substantially the same. The honourable mover, Mr. Krishna Rao, stated that the amendment of Mr. Gopalakrishnayya would have to be taken up after the disposal of the amendments relating to small cause suits."

The Hon'ble the PRESIDENT :—"Mr. Krishna Rao's motion is that the further consideration of item 22 (i) on the agenda be deferred till the House has dealt with and decided upon items 22 (ii) to (xiii) and 23 to 26. Mr. T. C. Srinivasa Ayyangar, in seconding the motion, is not bound to agree with the mover of the amendment. But the motion which will come before the House will be the mover's motion and not the seconder's."

Mr. T. C. SRINIVASA AYYANGAR :—"I withdraw my seconding, Sir."

Mr. T. ARUMAINATHA PILLAI :—"I second the motion, Sir."

Rao Bahadur K. GOPALAKRISHNAYYA :—"That is exactly the difficulty which I felt, Sir, when I moved the amendment. Column (1) deals with more or less a form only. Unless and until other amendments relating to columns 2 and 3 are considered, my amendment cannot be taken up."

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Schedule I, Article 1—*cont.*

The motion “to adjourn the further consideration of amendment 22 (i) on the agenda till after the disposal of amendments 22 (ii)-(xiii) and 23-26” was then put and carried.

Mr. T. C. SRINIVASA AYYANGAR :—“With your permission, Sir, I like to move an adjournment of the consideration of the rest of the subsidiary amendments under amendment No. 22 till after the disposal of the amendments 41 to 43. These are my reasons, Sir, for doing so. Schedule 1, column 1, No. 1 speaks of any plaint or written statement pleading a set-off or a counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3. The words ‘not otherwise provided for’ cover annexure 1-A to schedule 1 where *ad valorem* fees payable for small causes up to Rs. 500 are provided. Therefore, this being otherwise provided for, this is excepted from the class of plaints or written statements pleading a set-off or counter-claim, etc., mentioned in column 1 of Schedule 1. And Mr. Gopalakrishnayya’s amendments deal with schedule 1. Therefore, they come after a consideration of the rates and fees payable for either small causes or suits of a small cause nature tried as ordinary suits and therefore sought to be provided within annexure A to Schedule 1. They are to be considered and disposed of first and then it will facilitate the consideration of amendments 22 (ii) to (xiii). I therefore move, Sir,—

‘That further consideration of amendments 22 (ii)–(xiii) be deferred till after the disposal of amendments 41 to 43.’”

Mr. M. SURYANARAYANA PANTULU :—“I second it.”

The Hon’ble Mr. K. SRINIVASA AYYANGAR :—“I am sorry, Sir, that there is some confusion about the whole matter and this is the result. The other schedules to which amendments are given are really consequential upon the rates which are fixed. The other schedules to which amendments are given are merely computations in accordance with the settlement which will take place as to what the rate is to be. These schedules are handbooks for the use of practitioners to enable them to see at a glance the amount of fee payable. That really is consequential, as I said, upon the rate which we are going to fix, whether the rate is annas 6 for Rs. 5, annas 12 for Rs. 10 or any other rate. So what we have got to do is to get the rates fixed in schedule 1 under the various items or articles. Once these are settled, schedules 1-A or 1-B are merely calculations therefrom and the amounts will follow as a matter of course. What I would suggest, therefore, is to fix the rate for a small cause suit, for a suit below Rs. 500, a suit on the original side and so on. It is for the purpose of settling that that you have the motions from 22 (ii) to 26. That is why, I think, Mr. Krishna Rao moved for the adjournment of amendment 22 (i) till after we had disposed of these amendments and I think he is right. I do not think we can go on with the consequential amendments and then come back to the substantive ones. That would be reversing the process.”

Mr. T. C. SRINIVASA AYYANGAR :—“I am glad to know that; I do not press my motion.”

The motion was by leave withdrawn.

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Amendment 22 (ii) to (xiii).

The Hon'ble the PRESIDENT :—" I think it will be convenient to take up the amendments 22 (ii) to (xiii) together. After having perused them carefully, I find that they are inter-related, that they adopt a certain principle and proceed upon it. It will be convenient for the House if the whole case is presented by the honourable member and the House will then be able to decide upon the propriety of his principle."

Rao Bahadur K. GOPALAKRISHNAYYA :—" Sir, I beg to move the following amendments :—

- (ii) *In column 3 substitute 'six' for 'eight' in line 1.*
- (iii) *In the same column substitute 'six' for 'nine' in line 2.*
- (iv) *In the third paragraph column 2 for the words 'one thousand rupees' substitute the words 'five hundred rupees'.*
- (v) *In column 3 substitute 'twelve' for 'one rupee two' in line 3.*
- (vi) *After the third paragraph in column 2 add the following paragraph :—*
" When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof in excess of five hundred rupees up to one thousand rupees."
- (vii) *In column 3 opposite to the above new paragraph add 'One rupee'.*
- (viii) *In the fourth paragraph of column 2 for the word 'five' substitute the word 'three'.*
- (ix) *In lines 2 and 4 of the fifth paragraph in column 2 for the word 'five' substitute the word 'three'.*
- (x) *In line 5 of the same paragraph in column 2 for the words 'ten thousand' substitute the words 'seven thousand five hundred'.*
- (xi) *In lines 2 and 4 of the sixth paragraph in column 2 for the words 'ten thousand' substitute the words 'seven thousand five hundred'.*
- (xii) *In line 4 of the same paragraph in column 2 for the word 'twenty' substitute 'fifteen'.*
- (xiii) *In lines 2 and 4 of the seventh paragraph in column 2 for the word 'twenty' substitute 'fifteen'.*

" I thank you, Sir, for the suggestion. I will be able to tell the House what principle is involved in these amendments. I have already informed the House that the principle involved in these various amendments is to provide facilities for all suitors whose suits are valued at Rs. 1,000 and below so that they may pay a court fee according to the scale which is provided for in the various amendments I have tabled. The scale which I propose by means of these amendments is this. Up to suits valued at Rs. 500 I do not disturb the scale provided in the amending Bill. Items 22 (ii), (iii) and (iv) show that up to Rs. 500 I adopt the scale as is provided in article 2 in the present amending Bill, viz., 6 as., 6 as. and 12 as. Amendments 22 (iv) and (v) require that when the amount exceeds one hundred rupees and goes up to Rs. 500, I propose a rate of 12 annas for Re. 1 annas 2 as provided in the amending Bill. Amendment 22 (vi) is put down with a view to provide 10 per cent on the value of suits up to one thousand rupees. Generally, the

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suitors who resort to courts and whose suits are valued at Rs. 1,000 are poor and the fundamental principle even in this amending Bill is that taxation should not press heavily upon the poor. That is why I give a sort of progressive scale on suits above Rs. 500. Then over and above Rs. 1,000 I follow one other principle. Item (viii) proposes—“In the fourth paragraph of column 2 for the word “five” substitute the word “three.”

5 p.m.

There is a big gap between Rs. 1,000 and 5,000 as the Bill now provides, and I want to have an intermediary stage between these two classes of suits. I would therefore provide a different scale for suits up to Rs. 3,000 in my amendment. Then, as my amendments (ix) and (x) show, from Rs. 3,000 to Rs. 7,500 we have one class of suits, and there I propose to retain the same scale of fee as provided for in the Bill, that is Rs. 15. Then again, as proposed in my amendments Nos. (xi) and (xii), I provide for another intermediary stage in suits up to Rs. 15,000, between Rs. 7,500 and Rs. 20,000; that is to say, in the case of suits whose value ranges from Rs. 7,500 to Rs. 15,000, I propose to fix a fee of Rs. 22-8-0. Then, Sir, from Rs. 15,000 to 30,000 we would have another class of suits, and I propose to fix Rs. 30 in those cases according to the proposal in the Bill.

“That I think, Sir, would be the right method of giving facilities to various classes of suits whose value ranges, say, from Rs. 3,000 to Rs. 5,000, from Rs. 5,000 to Rs. 7,500, from Rs. 7,500 to Rs. 15,000 and from Rs. 15,000 to Rs. 30,000. These various amendments would not press heavily upon the poor, but would still leave the burden of taxation on the richer classes of the suitors. So that there will not be any necessity for retaining this article 2, because even these suits, which now come under article 2, will be included in the present amendment, as suits up to Rs. 1,000 would be treated as small cause suits and people who resort to the courts will have to pay only the same rate up to Rs. 1,000 irrespective of a suit being filed in a small cause court or not. Items (vii) to (xiii) are thus necessary and important amendments, and these various amendments, I think, would provide for a progressive or gradation scale of court-fees. They may be classed under one head, and as such these amendments would be voted together. I therefore move them for the acceptance of the House.”

Rao Bahadur A. S. KRISHNA RAO PANTULU :—“Mr. President, I second this amendment. I only wish to point out that this motion may be split up under two different heads. So far as sub-clauses (ii), (iii) and (iv) are concerned, they deal with valuation of suits up to Rs. 500. That is common to this amendment as also to other amendments which have to follow and of which notices have been given. That is a question which will affect all suits, not only those instituted in small cause courts, and there is no justification whatever for increasing the scale of fees in the case of suits of such small value. But there is a divergence of opinion as to the limit to which you must allow the scale of fees to stand as they are at present. My honourable friend Mr. Gopalakrishnayya suggested Rs. 500, I suggest Rs. 1,000, another honourable member, Mr. Arumainatha Pillai, suggested Rs. 5,000, while Mr. Ramalinga Chettiyar suggested Rs. 5,000 with some slight increase for Rs. 10,000. So far as this limit is concerned, it is common to all the amendments of which notice has been given, and I would request the attention of this Council to the desirability of adopting a progressive

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Schedule I, Article 1—*cont.*

scale of increase, rather than a heavy scale of enhancement as is proposed in the present Bill. I need not again remind the Council that, notwithstanding our anxiety to increase our resources, we must not make a big jump in the matter of increasing the tax, but we must be slow and gradual, at the same time trying to realize as much as is reasonable."

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"Mr. President, I am afraid, Sir, that we are really playing with this Bill. Let us be quite frank; whether you are going to increase the court fees or whether you are not. If you are going to allow all these amendments, that means that you are asking us to withdraw the Bill, because the number of suits above Rs. 500 on the average is about 25,000 out of 450,000 suits. If, therefore, the original fee is going to be retained with regard to the vast bulk of the suits, there is no point in raising the fee with regard to others.

"Now, the proposal is that all suits up to Rs. 500 should have the same court-fee as before. That means, as I said, out of 450,000 suits practically all but 25,000 shall pay the same fee. If you raise it to Rs. 1,000, of course you go on diminishing the number of suits. I find that the number of suits above Rs. 500 and below Rs. 1,000 is 15,554. Now, there are proposals to take the limit up to Rs. 1,000, there are proposals to take the limit up to Rs. 3,000 and there are also proposals to take the limit up to Rs. 5,000 and retain the same standard of fee. That means you are not going to give any enhancement of revenue whatsoever. If that is to be the attitude of the Council, by all means say so. There is no use of having these amendments, saying poorer litigants should pay less and richer litigants should pay more."

Rao Bahadur K. GOPALAKRISHNAYYA (*interrupting*):—"The present amendment is only up to Rs. 1,000 and not up to Rs. 4,000 or Rs. 5,000."

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*continuing*):—"I was dealing with suits exceeding Rs. 500 in value. They are only about 25,000 of the 450,000 suits, or thereabouts. The case is worse if the limit is raised to Rs. 1,000 or above."

Mr. B. MUNISWAMI NAYUDU (*interrupting*):—"Sir, I find the figure 5 lakhs here. I also find that Rs. 12,88,713 is given as the value of suits. I want to know, Sir, whether the 5 lakhs represent the number of suits or the value of the suits."

The Hon'ble Mr. K. SRINIVASA AYYANGAR (*continuing*):—"The number of suits is 5 lakhs. The value of suits of higher denominations is sure to be larger in proportion to their number. But it would not be enough for the purpose of covering the deficit which we want to cover. The proposal which I have made and which is much more modest than the proposals made in other provinces is to increase the *ad valorem* fee by about 50 per cent, and that 50 per cent, as you will find, stops with Rs. 20,000. With regard to higher denominations of suits we are not increasing the rate. In this connexion it may be useful if I read to the House from the Behar Bill. I take some figures at random. In Behar, suits between the value of Rs. 28,000 and Rs. 29,000 pay a fee of Rs. 1,725, while according to our proposals, if the suits are between Rs. 48,000 and Rs. 50,000, they will have to pay Rs. 1,762, or very nearly the same figure while, for the same in Behar they will have to pay Rs. 2,775.

[Mr. K. Srinivasa Ayyangar]

[13th March 1922]

Schedule I, Article 1—*cont.*

You must remember that the *ad valorem* rate is not increased after Rs. 20,000 in this province, while in Behar it goes on increasing, so that when you come to about 5 lakhs of rupees, the *ad valorem* fee there is Rs. 20,975, while we will have to pay about Rs. 5,000. Then, Sir, there it goes on increasing with regard to higher denominations till finally you have got a figure of Rs. 50,000 to which the Hon'ble the Finance Member drew attention with some envy. I have therefore, Sir, to object to these proposals for reduction, although they may be in the case of these small suits. I want the House to remember this. These suits, although they are of the value of Rs. 500 and less, include not merely money suits, but they include land suits as well. From what I said this morning it will be clear that a land suit which is valued at Rs. 500 and which yields an income of Rs. 7,000 and therefore ought to be valued at Rs. 1,50,000, if it is going to escape even the 50 per cent excess, I would respectfully submit to the House that it is not playing fair with regard to this Act.

"Now, Sir, I have retained the same fee as before with regard to cases tried in small cause courts. When you come to a trial of the suit as a regular suit, I am not able to see any difference between that suit, so far as the fee is concerned, and any other suit which is tried regularly. But if it is a small cause suit, then it is disposed of more quickly or summarily, and therefore it is that I have retained this distinction. In most of these cases, i.e., up to Rs. 200, if they are for money or movables, they are tried as small causes by the munsifs. If tried as a regular suit there are two advantages. You can file an appeal against any decision in a suit, whether its value is Rs. 200 or less, if it is tried as a regular suit; but if it is tried as a small cause, it is tried summarily and you have not the right of appeal. I have therefore distinguished between cases where a suit is tried as a small cause and where the suit is tried as a regular suit.

"There is one other point. I have already stated that of the vast bulk of these suits, it is only about 25,000 suits of all denominations that are for immovable property; and the largest number of the rest are triable as small causes, and are so tried. The vast bulk of cases therefore would not pay more than what they have been paying till now."

Rao Bahadur T. A. RAMALINGA CHETTIYAR :—"I have also given notice of a motion not in the same words as Mr. Gopalakrishnayya, but with a view to revise some of the fees that are prescribed in article 1. When I gave notice of these motions I did not see the statistics with regard to these suits. Now I fear that I probably went a little further than I should have done. I think up to Rs. 5,000 the fees should not be raised. But I will not press so far. I think, Sir, up to at least a thousand rupees the rates should not be increased. The scheme of the Court Fees Act is not what it is in other cases of taxation. In other cases the person who is taxed heavily is the person who has got the large income. But the Court Fees Act instead of being progressive is regressive as we go to higher figures. That is to say where the percentage of court fees on one thousand is $7\frac{1}{2}$ per cent the charge above one thousand is 5 per cent according to the present Act. So it works very great hardship on the poor people who have to pay ultimately the costs of the suits. We will not be justified in increasing the rates which the poor people have got to pay very

5-15 p.m.

13th March 1922] [Mr. T. A. Ramalinga Chettiyar]

Schedule I, Article 1—*cont.*

much in excess of the requirements of the moment. If the fee of the poorer men were increased from $7\frac{1}{2}$ to $11\frac{1}{4}$ per cent, I fear that it will work very heavily on them and I want relief for these poor people. You may at least ask them to pay as much as those who have to pay for the higher amounts. You should put them on the same basis as those who will have to pay on amounts above a thousand. So far as amounts up to one thousand are concerned I will press that the present levy be continued and that above that amount the change proposed in this Bill might take effect. By doing so we will be putting the poorer men in the same position as the richer men. Let both of them, poor men and rich men, go together. For these reasons, Sir, I support that portion of the amendment which relates to all items up to Rs. 1,000."

Mr. T. ARUMAINATHA PILLAI:—"I have also given notice of an amendment to reduce the rate. The reason why I fixed the maximum at five thousand rupees is this. So far as the suits involving a valuation of Rs. 5,000 and below are concerned they are allowed to have a second appeal, and those above 5,000 have got only one right of appeal. So it is only with that idea that I fixed the rate at Rs. 5,000. So far as these suits the statistics of which were given by the Hon'ble the Law Member, they come to about 25,000. It is not the same rate that we are paying. For by the method of assessment we have increased the rate from 5 to 10 and from 10 to 20 and therefore, Sir, so far as these 25,000 suits are concerned there is already an increase by twice that rate. It is only so far as the money suits are concerned that up to 500 rupees there will be the old rates. For the very reasons which were given by my friend Mr. Ramalinga Chettiyar these poor men ought not to pay a very large amount on account of the fact that this Government is not able to meet the deficit. It might be true that even if the maximum is raised to five thousand rupees the Government will not be able to meet the deficit which it has created for itself. But along with that you have to take into consideration the position of the poor litigants that have to go to courts. If their position were to be considered it is but necessary that some sort of consideration ought to be given them. I therefore support the amendment moved by my friend Mr. Gopalakrishnayya."

Diwan Bahadur R. VENKATARATNAM NAYUDU:—"I move that the question be now put."

The motion that the question be put was then put and carried.

Amendment 22 (ii) to (xiii) was then put and lost.

Consequently the following amendments were not moved and were therefore deemed to have been withdrawn:—

Amendment 23.

Rao Bahadur A. S. KRISHNA RAO PANTULU:—

"23. (i) For the first three sentences in column 2, substitute the following:—

'When such amount or value does not exceed one thousand rupees, for every ten rupees or part thereof.'

(ii) In column 3 omit 'Eight annas,' 'Nine annas' and 'One rupee two annas' and substitute therefor 'Twelve annas.'"

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Schedule I, Article 1—*cont.**Amendment 24.*

Rao Bahadur T. A. RAMALINGA CHETTIYAR :—

“ 24. (i) In the column entitled ‘ Proper fee ’ for the first item, viz., ‘ Eight annas ’, *substitute* ‘ Six annas ’.

(ii) In the same column for the second item, viz., ‘ Nine annas ’, *substitute* ‘ Six annas ’.

(iii) In the same column for the third item, viz., ‘ One rupee two annas ’, *substitute* ‘ Twelve annas ’.

(iv) In the same column for the fourth item, viz., ‘ Seven rupees eight annas ’, *substitute* ‘ Five rupees ’.

(v) In the same column for the fifth item, viz., ‘ Fifteen rupees ’, *substitute* ‘ Twelve rupees eight annas ’.”

Amendment 25.

Mr. T. ARUMAINATHA PILLAI :—

“ 25. Under the column ‘ Proper fee ’ *omit* the words ‘ Eight ’, ‘ Nine ’, ‘ One rupee two ’ and ‘ Seven rupees eight annas ’ and *substitute* the following words respectively : ‘ Six ’, ‘ Six ’, ‘ Twelve ’ and ‘ Five rupees ’.”

[If the above amendment is carried, make the necessary alterations in the table of rates (b) at page 9.]

Amendment 26.

The following motion standing in the name of Mr. P. Siva Rao was not moved and was therefore deemed to have been withdrawn :—

“ 26. Reduce the proper fee prescribed in column 3 by $12\frac{1}{2}$ per cent and make corresponding consequential alterations throughout the schedule.”

Owing to the result of the other motions, the following motion of Mr. K. Gopalakrishnayya, the consideration of which was adjourned, was also not moved and deemed to have been withdrawn :—

“ 22. (i) In column 1 *omit* the last words ‘ and in article 2 of this schedule ’.”

The Council then adjourned at 5-25 p.m. to meet at 11 a.m. on Tuesday the 14th March 1922.

L. D. SWAMIKANNU,
Secretary to the Legislative Council.